

Message

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**From:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Sent:** 12/7/2017 5:45:13 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** 12/6/17 Port of Oakland meeting with R9 and DOT notes  
**Attachments:** ATT59026

In attendance:

Kurt, Mary, Yvette, Mary O'Lone,

Richard: TMP will be over in April 2018, so time is of the essence. And AQ Plan also?

Mary: We did investigation 18 months ago and got BAAQMD's statements about there being  
We have more leverage than can be acknowledged right now.

Ryan – TMP doing new one. "I don't think we are going to be permitted to find them in violation even though we find them in violation." 12/6/17, 1543 hours.

Plan B: Mediator.

Kurt: Complainants – we talked to them in August and they were going to get back to us and haven't. We were also going to discuss with them to update.



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: keeler.katsumi@epa.gov

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Please consider the environment before printing this email.

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/1/2017 3:44:22 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Oakland Draft RA.docx  
**Attachments:** Oakland Draft RA.docx

Message

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**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 1/30/2018 4:37:50 PM  
**To:** O'Lone, Mary [OLone.Mary@epa.gov]  
**CC:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Oakland Draft Informal Resolution Agreement EPA and DOT reconciliation 2018.1.30.docx  
**Attachments:** Oakland Draft Informal Resolution Agreement EPA and DOT reconciliation 2018.1.30.docx

Mary (also cc'ing Katsumi now that he is back in the office, so he can look through again): See revised draft agreement. Ryan and I attempted to address your comments/questions. Katsumi also weighed in on a question you had regarding specifics of monitoring in the Background section. I noted that in a comment bubble and with Katsumi's revised language. Mary, also, teeing up the paragraph in II.A.3, where you indicated that Ken Israels may be able to help us there. Katsumi, you can look at that paragraph as well.

Process: Hope to get this good enough to recirculate to the larger federal group soon to look for any final major concerns. Goal is to get that federal buy-in and then send to Recipients by the end of the week.

I'm heading out at noon- not feeling well, but will be monitoring email.

Kurt T. Temple  
Senior Advisor  
External Civil Rights Compliance Office  
EPA Office of General Counsel  
1200 Pennsylvania Avenue, NW  
Room 2524R  
Washington, D.C. 20460  
202-564-7299

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/27/2017 6:24:34 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Sounds like a plan!

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ Martin Luther King, Jr. , 18th April, 1959

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 2:02 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

That I will do on my own responsibility. But I'll wait until I see Lilian again because I just noticed that SHE forgot to sign it.

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**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 2:00 PM  
**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Sure, it's proof. But we just need to keep it as proof. Anyway – follow your instincts. If you believe the expectation is that we will send a PDF, go for it.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:58 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I didn't hear that. In fact, I think I heard Dale say this morning in the meeting that we can send it out. Also, I think, for records purposes, an actual copy of the sheet is best. That's called proof in legal circles, I believe.

---

**From:** McGhee, Debra

**Sent:** Wednesday, September 27, 2017 1:56 PM

**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I thought Lilian promised that we'd type it. . . .

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

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**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 1:55 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

So I can send it out as is? I think that's the best way. Why single him out as attending only partially is my thought.

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**From:** McGhee, Debra

**Sent:** Wednesday, September 27, 2017 1:49 PM

**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Katsumi- since Kevin showed up to the meeting with a dozen business cards to distribute, I'd say it is his intent to make his contact information available. I would therefore include him. Thanks for handling this.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 1:47 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>

I'm sending this to you in case you want to send it out yourself.

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/1/2017 2:25:43 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Oakland Draft RA.docx  
**Attachments:** Oakland Draft RA.docx

Okay. I just learned more than I really wanted to know about formatting of stored lists in Word. It is fairly well cleaned up.

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 8/31/2017 10:38:37 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Oakland Draft RA.docx  
**Attachments:** Oakland Draft RA.docx

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/27/2017 6:00:17 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

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*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**Sent:** Wednesday, September 27, 2017 1:58 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
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I didn't hear that. In fact, I think I heard Dale say this morning in the meeting that we can send it out. Also, I think, for records purposes, an actual copy of the sheet is best. That's called proof in legal circles, I believe.

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**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 1:56 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I thought Lilian promised that we'd type it. . . .

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:55 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

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**Sent:** Wednesday, September 27, 2017 1:49 PM

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**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

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*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

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**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 1:47 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>  
I'm sending this to you in case you want to send it out yourself.

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 8/31/2017 8:42:54 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Oakland Draft RA.docx  
**Attachments:** Oakland Draft RA.docx

See what you think

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/27/2017 5:56:08 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I thought Lilian promised that we'd type it. . . .

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:55 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

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**Sent:** Wednesday, September 27, 2017 1:49 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

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*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:47 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>  
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**Sent:** 9/27/2017 5:49:17 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

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*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:47 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>  
I'm sending this to you in case you want to send it out yourself.

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 8/31/2017 7:04:50 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** FW: Voicemails  
**Attachments:** City of Oakland Position Statement Notes.docx; Port of Oakland Position Statement notes.docx

This guy is smart.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in." ~ Martin Luther King, Jr. , 18th April, 1959**

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**From:** Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]  
**Sent:** Thursday, August 31, 2017 2:10 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** RE: Voicemails

I've been involved with this situation for a while and have a pretty good grasp of a lot of the background here.

This may help you get up to speed. Attached are my personal notes on the two Position Statement papers that the City and the Port sent us. I break down their positions and their arguments, and note my own thoughts on that with a "me." You may find this useful, as those position statements are pretty dense. Keep in mind, these are just my personal notes on these.

I've started putting together a brief description of the substantive elements of a draft agreement as DOT would like to see it as well. As I see it, the main issues here are truck management in West Oakland and air emissions control. But overarching both of those, and crucial to the development of any strategy made to address both of those, is meaningful public engagement. So that's really the first element of any resolution for them, is the development of a meaningful public engagement strategy around the entire OAB redevelopment project, that we can work with them to develop, that will then be used to create a comprehensive Truck Management Plan, and an air quality plan, also with our assistance. That's how I see it. A resolution agreement to the complaint can be used to kickstart the creation of those items and to formalize our involvement in their creation.

Ryan

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** McGhee, Debra [mailto:mcghee.debra@epa.gov]  
**Sent:** Thursday, August 31, 2017 2:03 PM  
**To:** Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>  
**Subject:** RE: Voicemails

Here's the strategy I'm employing at the moment –

I am going through the items at the back of the Complaint which are entitled "Less Discriminatory Alternatives." I'm thinking of those as the complainants' ask, and then reviewing the documents we have on hand that relate to each of the topic areas. It appears that steps have been taken that would get us halfway there to addressing some of the issues, but there needs to be, I think, more enforcement. For example, there is already a state ordinance about idling and the construction plan includes a rendering of how this will be posted. But will it be enforced?

I believe that we would appear more credible during early discussions if we are well versed in information that has been submitted and the steps that have been taken. If the effort that I've described above appears to be duplicative of something that you are already undertaking, please let me know.

That said, sure—why not have a meeting. Next week, perhaps.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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---

**From:** Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]

**Sent:** Thursday, August 31, 2017 12:31 PM

**To:** McGhee, Debra <mcghee.debra@epa.gov>

**Subject:** Voicemails

Hey Debra:

I got your voicemails. I also got calls from some other folks at EPA, so I think it'd be a good idea to have a meeting next week and discuss our strategy. We can all ask questions, bring everyone up to speed, and get us all working on the projects necessary to be ready for our meeting with the City and Port on September 26.

Ryan

**Ryan N. Fitzpatrick, Esq.**

Lead Civil Rights Analyst

Departmental Office of Civil Rights

Office of the Secretary

U.S. Department of Transportation

W78-312

(202) 366-1979

Message

---

**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 8/31/2017 2:39:36 PM  
**To:** O'Lone, Mary [OLone.Mary@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Sure. I'll look into that file today and transfer it to the I Drive,

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** -- Martin Luther King, Jr. , 18th April, 1959

---

**From:** O'Lone, Mary  
**Sent:** Wednesday, August 30, 2017 4:53 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Debra-

Can you please load the contents of the CD (after checking for viruses of course) into the I drive's Shared Civil Rights folder so we can all have access to it? Or if you don't want to do that – can you burn a CD for me & I will pick it up when I am in next week?

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** McGhee, Debra  
**Sent:** Wednesday, August 30, 2017 4:02 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>  
**Subject:** RE: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

I do. It's filed away in the drawer. I'll show you.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office

Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi

**Sent:** Wednesday, August 30, 2017 4:00 PM

**To:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>

**Subject:** FW: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Does anyone have the CD that goes with this letter?

---

**From:** Dorka, Lilian

**Sent:** Wednesday, August 16, 2017 9:03 PM

**To:** Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>; Johnson, Johahna <[Johnson.Johahna@epa.gov](mailto:Johnson.Johahna@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>; ryan.fitzpatrick@dot.gov

**Subject:** Fwd: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Here is port of Oakland's response. Lilian

Sent from my iPhone

Begin forwarded message:

**From:** "Thomas, April M." <[AThomas@jenner.com](mailto:AThomas@jenner.com)>

**To:** "Dorka, Lilian" <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>

**Subject:** FW: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Ms. Dorka,

My original email to you at [Lilian.dorka@epa.gov](mailto:Lilian.dorka@epa.gov) was bounced back, so I am trying this email that I found from a google search.

Thank you,  
April

---

**From:** Thomas, April M.

**Sent:** Wednesday, August 16, 2017 5:28 PM

**To:** 'Lilian.dorka@epa.gov' <[Lilian.dorka@epa.gov](mailto:Lilian.dorka@epa.gov)>; 'Charles.james@dot.gov' <[Charles.james@dot.gov](mailto:Charles.james@dot.gov)>; 'ryan.fitzpatrick@dot.gov' <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>; 'farrell.ericka@epa.gov' <[farrell.ericka@epa.gov](mailto:farrell.ericka@epa.gov)>; 'mheffes@portoakland.com' <[mheffes@portoakland.com](mailto:mheffes@portoakland.com)>

**Cc:** Grayson, E. Lynn <[lgrayson@jenner.com](mailto:lgrayson@jenner.com)>; Torrence, Allison A. <[ATorrence@jenner.com](mailto:ATorrence@jenner.com)>; Schoedel, Lisa M. <[LSchoedel@jenner.com](mailto:LSchoedel@jenner.com)>; McDaniel, Tracie A. <[TMcDaniel@jenner.com](mailto:TMcDaniel@jenner.com)>

**Subject:** Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

All:

Please find attached the Port of Oakland's response to the Title VI Complaint, DOT #2017-0093, EPA File No. 14R-17-R9.

Thank you,  
April Thomas

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**April M. Thomas**

Legal Secretary

**Jenner & Block LLP**

353 N. Clark Street, Chicago, IL 60654-3456 | [jenner.com](http://jenner.com)

+1 312 840 8808 | TEL

+1 312 527 0484 | FAX

[AThomas@jenner.com](mailto:AThomas@jenner.com)

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Message

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 8/30/2017 8:52:53 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Debra-

Can you please load the contents of the CD (after checking for viruses of course) into the I drive's Shared Civil Rights folder so we can all have access to it? Or if you don't want to do that – can you burn a CD for me & I will pick it up when I am in next week?

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** McGhee, Debra  
**Sent:** Wednesday, August 30, 2017 4:02 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>  
**Subject:** RE: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

I do. It's filed away in the drawer. I'll show you.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, August 30, 2017 4:00 PM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>  
**Subject:** FW: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Does anyone have the CD that goes with this letter?

---

**From:** Dorka, Lilian  
**Sent:** Wednesday, August 16, 2017 9:03 PM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Keeler, Katsumi

<Keeler.Katsumi@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; ryan.fitzpatrick@dot.gov  
**Subject:** Fwd: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Here is port of Oakland's response. Lilian

Sent from my iPhone

Begin forwarded message:

**From:** "Thomas, April M." <AThomas@jenner.com>  
**To:** "Dorka, Lilian" <Dorka.Lilian@epa.gov>  
**Subject:** FW: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Ms. Dorka,

My original email to you at [Lilian.dorka@epa.gov](mailto:Lilian.dorka@epa.gov) was bounced back, so I am trying this email that I found from a google search.

Thank you,  
April

---

**From:** Thomas, April M.  
**Sent:** Wednesday, August 16, 2017 5:28 PM  
**To:** 'Lilian.dorka@epa.gov' <Lilian.dorka@epa.gov>; 'Charles.james@dot.gov' <Charles.james@dot.gov>; 'ryan.fitzpatrick@dot.gov' <ryan.fitzpatrick@dot.gov>; 'farrell.ericka@epa.gov' <farrell.ericka@epa.gov>; 'mheffes@portoakland.com' <mheffes@portoakland.com>  
**Cc:** Grayson, E. Lynn <lgrayson@jenner.com>; Torrence, Allison A. <ATorrence@jenner.com>; Schoedel, Lisa M. <LSchoedel@jenner.com>; McDaniel, Tracie A. <TMcDaniel@jenner.com>  
**Subject:** Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

All:

Please find attached the Port of Oakland's response to the Title VI Complaint, DOT #2017-0093, EPA File No. 14R-17-R9.

Thank you,  
April Thomas

---

**April M. Thomas**  
Legal Secretary

**Jenner & Block LLP**  
353 N. Clark Street, Chicago, IL 60654-3456 | [jenner.com](http://jenner.com)  
+1 312 840 8808 | TEL  
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Message

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**From:** Farrell, Ericka [Farrell.Ericka@epa.gov]  
**Sent:** 8/30/2017 8:00:24 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Automatic reply: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

I am out of the office on Monday, August 28, 2017 through September 5, 2017. I will be working from alternate location on Tuesday, September 5, 2017 and will return to the office on Wednesday, September 6, 2017. If you need immediate assistance you may contact Debra McGhee at 202-564-4646.

Ericka Farrell  
202-564-0717

Message

---

**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/18/2017 1:22:35 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**CC:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** 2017 09 18 Oakland Draft General Resolution Framework dem.docx  
**Attachments:** 2017 09 18 Oakland Draft General Resolution Framework dem.docx

Hi, Kurt – I don't have any substantive comments. I found two small errors in wording that I flagged.

Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 9/18/2017 12:45:16 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**CC:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** FW: 2017 09 18 Oakland Draft General Resolution Framework .docx  
**Attachments:** 2017 09 18 Oakland Draft General Resolution Framework .docx

**Importance:** High

Lucky you! We have something for you to review ASAP. Welcome back.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ ~ *Martin Luther King, Jr. , 18th April, 1959*

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**From:** Temple, Kurt  
**Sent:** Friday, September 15, 2017 4:34 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** 2017 09 18 Oakland Draft General Resolution Framework .docx  
**Importance:** High

Debra: Here is the draft of the Agreement. Please take a look on Monday morning. Thanks, Kurt

**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 11/29/2017 6:54:06 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**CC:** Rhines, Dale [rhines.dale@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** 2017 11 15 Briefing Doc.docx  
**Attachments:** 2017 11 15 Briefing Doc.docx

I am sending along an update on Oakland.

**1. *City of Oakland City of Oakland/ Port of Oakland (EPA File #s 13R-17-R9/ 14R-17-R9) (Case Managers Debra McGhee and Katsumi Keeler)***

Background: EarthJustice, on behalf of the communities of West Oakland, the West Oakland Environmental Indicators Project (WOEIP) filed a complaint with EPA ECRCO and DOT Department of Civil Rights alleging that City of Oakland's has engaged in a pattern of neglect and systemic disregard for the health and wellbeing of West Oakland's residents, as demonstrated by its continuous authorizations of expanded freight infrastructure activities at the Port of Oakland and the former Oakland Army Base ("OAB"), while failing to ensure adequate health and safety protections for the surrounding community. The complaint is also filed against the Port of Oakland and alleges a continuous expanding of the Port's maritime, shipping, and transport activities in a manner that similarly exposes West Oakland residents to severe air pollution emissions without adequate mitigation. describing a pattern of conduct by the City and Port of Oakland that inflicts unjustified and unequal impacts on the historically black community of West Oakland. The complaint further alleges that the City and Port of Oakland's actions inflict unjustified and unequal impacts on the historically black community of West Oakland in violation of Title VI.

Status:

- **On September 14, 2017** ECRCO and CRFLO collaborated in an informal call with the Port's attorney to discuss public disclosure obligations of the port vis-à-vis negotiation of a resolution. According to the Port's attorney, dialogue leading up to an agreement can be kept confidential until 10 days before the Board actually votes to enter into such an agreement.
- ECRCO provided the draft framework of a resolution agreement to Recipients for review on **September 19, 2017**.
- A conference call was held on **September 22, 2017**, to plan for the September 26, 2017 meeting with Recipients.
- **On September 26, 2017**, representatives from the Port and City traveled to D.C. to confer with EPA and DOT, as described above, the Port and City had been provided with the framework of a resolution agreement in order to ensure that they were clear on the nature of the framework and associated expectations and obligations.
  - During the meeting, the City and Port came with a prepared presentation to urge EPA and DOT to consider dismissing the complaint without a finding or an informal resolution. The City and Port stated that they had a "robust" public engagement process and that they were unprepared to commit to specific actions given that the dialogue in which they were currently engaged with stakeholders might, if followed to its conclusion, result in different goals or actions being adopted.
  - The City and Port sought to convince EPA and DOT that, if the complaints were held open without a finding or an agreement, the dispute giving rise to the complaint would be resolved, allowing both agencies to close their cases as moot. The City and Port stated that they were unconvinced that they had violated Title VI in anyway.

- ECRCO, CRFLO, Region 9 and DOT met with DOJ to update regarding status on **October 24, 2017**.
- On November 12, 2017, ECRCO received a joint City of Oakland/Port of Oakland letter stating that Recipients agree to work on the Informal Resolution Agreement and enclosed a redlined copy of the Agreement.
- ECRCO is collaborating with Region 9 in review of the proposed language provided by the Recipients. A call with DOT to determine next steps is scheduled for **December 6, 2017**.

Message

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**From:** Rhines, Dale [rhines.dale@epa.gov]  
**Sent:** 8/21/2017 5:44:55 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Oakland

Given Erika's upcoming detail, I am assigning Debra to be the co-lead on the Oakland case. Let's schedule something for later this week so we can figure out next steps. I know that it is important to review the responses we received from both the Port and the City and to start drafting a framework for an informal agreement. Thanks.

Dale Rhines  
Deputy Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel  
202-564-4174  
WJC-N Room 2524

Message

---

**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 1/18/2018 7:53:03 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** FW: Oakland DRAFT Agreement DOT edits  
**Attachments:** 2018.01.17 Oakland Draft Informal Resolution Agreement EPA Consolidated Review DOT edits.docx

Katsumi: Please take a look at this when you get the chance. Thanks, Kurt

---

**From:** Temple, Kurt  
**Sent:** Thursday, January 18, 2018 9:06 AM  
**To:** Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>  
**Subject:** FW: Oakland DRAFT Agreement DOT edits

Richard and Desean: I have only preliminarily looked through this. But sharing now so you can get a jump on providing any feedback on any DOT comments/edits. Kurt

---

**From:** [ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov) [mailto:[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)]  
**Sent:** Wednesday, January 17, 2018 4:19 PM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>  
**Cc:** [yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov); [deeana.jang@dot.gov](mailto:deeana.jang@dot.gov); [daryl.hart@dot.gov](mailto:daryl.hart@dot.gov); [Rachel.Kizito-Ramos@dot.gov](mailto:Rachel.Kizito-Ramos@dot.gov)  
**Subject:** Oakland DRAFT Agreement DOT edits

Hey Kurt:

Attached is a draft version of the Oakland Agreement with DOT's edits. There are a lot of comments and red-lines, but it is not substantively different from the version you sent, though it may look messy. Many of the comments ask questions that we should all discuss in a big in-person meeting to iron out the final draft version to send to Oakland for this round.

Take some time to review this, and let's try and get a meeting scheduled soon so you and I can finish this up and get it out to Oakland.

Ryan

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

Message

---

**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 8/25/2017 3:37:03 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Oakland

Point taken. But, could you provide some of your hard scientific evidence based on the reports of monitors like you did in Beaumont? You did some great graphics in support of that case. I would be good to be able say with some certainty how much more harmful the air is.

Did you read the City's defense? I haven't read that yet.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 10:52 AM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Re: Oakland

Yes, it's improving, but that's misleading. It's like saying Oakland residents used to cough 8 times a day in 2010 and now they only cough twice per day. The problem is, other Alameda County residents are not coughing at all.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 10:28:49 AM  
**To:** Keeler, Katsumi  
**Subject:** RE: Oakland

I haven't been able to get the Albuquerque agreement cleared by CRFLO. Mary was fiddling around with my wording and now she isn't in and I had promised to get the draft to the recipients today, so that is giving me a headache.

In any case I don't think there is sufficient similarity between the issues for that to be the template. Moreover, Lilian asked for bullets to "frame" the conversation about a resolution. So that sounds good to me. Maybe less torturous CRFLO review and more fruitful, situation-specific conversation.

I am currently reading the Port's defense.

They say they are actively engaged in an Energy Efficiency and Renewable Energy Study and installing infrastructure to provide clean shore power so that vessels can plug in while at berth.

Also, the Port says that the air quality is improving. Do we have any facts about that? Can we say for sure whether its getting better or worse for the neighbors?

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi

**Sent:** Friday, August 25, 2017 10:13 AM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** Re: Oakland

Here's what I'm thinking:

1. Use your Albuquerque settlement agreement as a template to create a settlement agreement for Oakland. For now, we just need one. We have to decide later if we need two. So can you just use Word to take your Albuquerque and replace all the Albuquerque and Bernalillos with Port of Oakland and City of Oakland? (Debra) This way, at any time, we can say we have a draft agreement, and we will also have a framework for the agreement. We also need to figure out if we are going to have one agreement or two.
2. From your notes of our conversation with the Complainants, let's create a list of the Complainant's wants. Can you do this? (Debra) I will review the complaint and try to figure out what they want from the complaint. (Katsumi) We can then put these two together and come up with the Complainant's issues list which incorporates what they expressed in the official complaint and the interview.
3. We already have R9's issues list, but Richard's thoughts and words need to be interpreted, so let me try to do that. (Katsumi)
4. We are still waiting for DOT's issues list, rights?
5. And we can talk later about ECRCO's issues list after I've researched a little more on what has been done by BAAQMD and CARB. (Katsumi)

What do you think? Then we just wait for DOT's issues list and incorporate that. I think we can get this done in a few of days.

---

**From:** McGhee, Debra

**Sent:** Friday, August 25, 2017 9:54:15 AM

**To:** Keeler, Katsumi

**Subject:** Oakland

Are you working today?

I don't have a plan to lay out to you at this time. I am trying to read through the documents, set up the case file, etc. We are going to try to settle. Lillian wants bullets defining the issues that will be addressed via settlement.

*Debra E. McGhee*

Team Lead

004273 2020-10-29

External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 9:51 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** Re:

What are you thinking on how we should proceed on the Oakland case? I don't know of any communications you've had with Ericka.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 8:47:34 AM  
**To:** Keeler, Katsumi  
**Subject:** RE:

Absolutely!

*Debra E. McGhee*  
Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 8:40 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:**

Are you working today?

Message

---

**From:** Grow, Richard [Grow.Richard@epa.gov]  
**Sent:** 1/17/2018 4:51:26 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Question re monitoring stations in West Oakland

Katsumi – this data is perhaps the least useful of all, the more useful being (1) the BAAQMD CARE study referenced in previous findings and (2) more recent studies by EDF and UC Berkeley doing intensive sensor based info collection. FYI our view is that the case for disparate impacts is readily available, if needed, but as of yet there has been no request (from management at ECRCO or here) to assemble such a case. If and when that is called for, we are ready in our technical role to work on that with our partner agencies at the S/L level. Richard

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, January 17, 2018 8:19 AM  
**To:** Grow, Richard <Grow.Richard@epa.gov>  
**Subject:** Question re monitoring stations in West Oakland

Hi, Richard, I noticed that there are 3 monitoring station in West Oakland operated by the City. Is the information from those stations useful in telling us about PM concentrations in West Oakland? It looks like these stations are only going to be operated while construction activity is going on at the OAB. Do you know if the City plans to shut down these stations after construction is completed? Thanks.

---

<< OLE Object: Picture (Device Independent Bitmap) >>

Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: keeler.katsumi@epa.gov

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Message

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**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 8/25/2017 2:28:49 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Oakland

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Also, the Port says that the air quality is improving. Do we have any facts about that? Can we say for sure whether its getting better or worse for the neighbors?

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 10:13 AM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Re: Oakland

Here's what I'm thinking:

1. Use your Albuquerque settlement agreement as a template to create a settlement agreement for Oakland. For now, we just need one. We have to decide later if we need two. So can you just use Word to take your Albuquerque and replace all the Albuquerque and Bernalillos with Port of Oakland and City of Oakland? (Debra) This way, at any time, we can say we have a draft agreement, and we will also have a framework for the agreement. We also need to figure out if we are going to have one agreement or two.
2. From your notes of our conversation with the Complainants, let's create a list of the Complainant's wants. Can you do this? (Debra) I will review the complaint and try to figure out what they want from the complaint. (Katsumi) We can then put these two together and come up with the Complainant's issues list which incorporates what they expressed in the official complaint and the interview.

3. We already have R9's issues list, but Richard's thoughts and words need to be interpreted, so let me try to do that. (Katsumi)
4. We are still waiting for DOT's issues list, rights?
5. And we can talk later about ECRCO's issues list after I've researched a little more on what has been done by BAAQMD and CARB. (Katsumi)

What do you think? Then we just wait for DOT's issues list and incorporate that. I think we can get this done in a few of days.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 9:54:15 AM  
**To:** Keeler, Katsumi  
**Subject:** Oakland

Are you working today?

I don't have a plan to lay out to you at this time. I am trying to read through the documents, set up the case file, etc. We are going to try to settle. Lillian wants bullets defining the issues that will be addressed via settlement.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 9:51 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** Re:

What are you thinking on how we should proceed on the Oakland case? I don't know of any communications you've had with Ericka.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 8:47:34 AM  
**To:** Keeler, Katsumi  
**Subject:** RE:

Absolutely!

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 8:40 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:**

Are you working today?

Message

---

**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 1/12/2018 4:31:32 PM  
**To:** O'Lone, Mary [OLone.Mary@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** FW: W.O. status check, fallback ?

fyi

-----Original Message-----

From: Temple, Kurt  
Sent: Friday, January 12, 2018 11:25 AM  
To: Grow, Richard <Grow.Richard@epa.gov>  
Subject: RE: W.O. status check, fallback ?

Richard: I heard from Ryan and he is working it through his chain. I emphasized to him the importance of getting the document back, having our discussion, and sending the document back to recipients, based on the concerns you have raised, as well as Lilian's push to get this document out. He understands, has been open with me about working through the challenges of his chain, and is doing everything he can. He also noted that he heard from Recipients this week, who are waiting for the revised document -- which is good news that they are still interested and perhaps puts that extra pressure on DOT that Ryan needs to get that document back to us. Lilian is back from leave on Tuesday and I have teed this up for her to discuss ASAP.

Kurt

-----Original Message-----

From: Grow, Richard  
Sent: Friday, January 12, 2018 10:55 AM  
To: Temple, Kurt <Temple.Kurt@epa.gov>  
Subject: W.O. status check, fallback ?

Hi Kurt -

Hoping for reality check on status of getting the resolution agreement back from DOT and out to City and Port. Per my earlier notes re timing, I continue to feel we need to get something substantive on the table asap, at least as a "marker", as the City and Port rather frenetically try to wrap up their truck and Port air plans unguided by any federal direction in the context of the Title VI complaint. Which goes to the question of the need for an (EPA) fallback strategy if DOT continues to hesitate ? Feel free to call, best by cell as I'm on the road today.

Richard

**Personal Matters / Ex. 6**

Message

---

**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 1/4/2018 4:05:06 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]  
**Subject:** FW: FYI: WOEIP position on Port air plan update process  
**Attachments:** Engagement Criteria WOEIP Jan2018.docx; MAQIP Evaluation - MSG Outreach Report 10.9.09.pdf

Fyi.

---

**From:** Grow, Richard  
**Sent:** Thursday, January 04, 2018 10:47 AM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>  
**Subject:** FYI: WOEIP position on Port air plan update process

Kurt & Ryan – brief update on Port initiation of update process for it's a.q. plan

The Port is in the process of reconvening a "task force" to update its 2009 "Maritime Air Quality Improvement Plan" (MAQIP), that plan having come out of a process that many of us, including an "Interagency Workgroup" in which we (EPA, ARB, BAAQMD and County Health) participated found quite frustrating and unproductive. That dissatisfaction was documented in several pieces of correspondence. The Port has retained the same contractor/facilitator as last time, CONCUR, who have requested meetings with WOEIP in prep for the reconvening. All of this is preface to my forwarding the WOEIP's current draft list of conditions ("engagement criteria") for their participation.

I'm also attaching a report critically evaluating that MAQIP process authored by Viveka Chen. This report was contracted by the Port. Viveka was also a most excellent facilitator of the founding and operation of the West Oakland Toxics Reduction Collaborative (WOTRC) from 2005-2009. Among the WOEIP conditions for participating in the task force is to review and address the concerns raised in the report. Frankly there is no comparison between the quality of the facilitation provided by Viveka and CONCUR, and if we (feds) were to consider retaining a consultant or facilitator for moving forward on the issues facing us, she would be at the top of my list of recommendations.

Richard

## Appointment

---

**From:** Rhines, Dale [rhines.dale@epa.gov]  
**Sent:** 8/17/2017 2:21:59 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]

**Subject:** Accepted: Initial discussion with Earthjustice re Port of Oakland case

**Location:** DCRoomARN2528/DC-ARN-OCR-Room **Conference Line/Code / Ex. 6**

**Start:** 8/17/2017 7:00:00 PM

**End:** 8/17/2017 8:00:00 PM

**Recurrence:** (none)

Message

---

**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 11/15/2017 10:15:51 PM  
**To:** O'Lone, Mary [OLone.Mary@epa.gov]; Rhodes, Julia [Rhodes.Julia@epa.gov]  
**CC:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** FW: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9  
**Attachments:** City and Port Joint Proposed Informal Resolution Agreement.pdf; City and Port DRAFT Informal Resolution Agreement REDLINE to EPA DOT Draft.pdf; CLEAN Port Draft Informal Resolution Agreement.docx

Attached please see the City and Port's response to our IR proposal. I have loaded these documents onto the working folder on the shared drive, and saved them as part of the permanent, official case file under correspondence.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, November 15, 2017 4:35 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** FW: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

---

**From:** Dorka, Lilian  
**Sent:** Sunday, November 12, 2017 4:15 PM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Yvette Rivera <yvette.rivera@dot.gov>; ryan.fitzpatrick@dot.gov  
**Subject:** Fwd: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Sent from my iPhone

Begin forwarded message:

**From:** "Michele Heffes" <mheffes@portoakland.com>  
**To:** "charles.james@dot.gov" <charles.james@dot.gov>, "Dorka, Lilian" <Dorka.Lilian@epa.gov>  
**Cc:** "Parker, Barbara" <BParker@oaklandcityattorney.org>, "Bee, Maria" <MBee@oaklandcityattorney.org>, "Cappio, Claudia (CCappio@oaklandnet.com)" <CCappio@oaklandnet.com>, "Danny Wan" <dwan@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Chris Lytle" <clytle@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Smith, Jamie" <JSmith@OaklandCityAttorney.org>, "Laurice Henry-Ross" <lhenry@portoakland.com>  
**Subject:** Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Dear Ms. Dorka and Mr. James:

Attached please find a November 10, 2017, letter (including the 2 referenced attachments) from Oakland City Attorney, Barbara J. Parker, and Port Attorney, Danny Wan, concerning the above-referenced matter. Hard copies will be sent via First Class Mail. Please let me know if you have any questions.

Michele

Michele Heffes  
Assistant Port Attorney  
Port Attorney's Office  
530 Water Street  
Oakland, CA 94607  
Phone: (510) 627-1348  
[mheffes@portoakland.com](mailto:mheffes@portoakland.com)

*ATTORNEY-CLIENT PRIVILEGED*

---

*CONFIDENTIAL COMMUNICATION*

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Message

---

**From:** McGhee, Debra [mcghee.debra@epa.gov]  
**Sent:** 11/15/2017 5:42:10 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** RE: KSM Briefing Document 10-25-2017.docx

Okay—but we have to get the document to Kevin’s assistant by 3:00 pm, so I won’t be amending it later than 3:00. You can report on the outcome tomorrow, though.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ ~ *Martin Luther King, Jr. , 18th April, 1959*

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**From:** Keeler, Katsumi  
**Sent:** Wednesday, November 15, 2017 12:36 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>  
**Subject:** KSM Briefing Document 10-25-2017.docx

<< File: KSM Briefing Document 10-25-2017.docx >>

Please see in red an update on the KSM doc for Port of Oakland. I will also be sending you an additional update for MDEQ after we have the convo with Marianne today at 4:00 p.m.

Message

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 12/14/2017 3:57:42 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**CC:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** FW: West Oakland findings  
**Attachments:** BAAQMD 12\_7\_2017 MSC Port\_OAB.pdf; CA AG Coal Amicus Brief 12\_2010.pdf; BAAQMD 12\_7\_2017 Update on the Port of Oakland-and 617.pptx

Kurt-

I am forwarding you this useful email & info that Richard sent.

I responded to his "If we had clarity/agreement with HQ on what the required elements are, I'd be inclined to start working with CARB/BAAQMD in assembling the necessary documents, if for no other reason than to maintain the *option* of making a finding if and when it is seen as needed" by saying that I would check in with you b/c I didn't know what conversations you'd had with Lilian after our last call with DOT & or if the call Alexis requested earlier this week happened. (Alexis sent me a copy of her email after she sent it to you all.)

I understand that the Alexis call is tomorrow. I am out tomorrow, but I can call in for it. Unless it is supposed to be just Lilian & Alexis.

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Grow, Richard  
**Sent:** Wednesday, December 13, 2017 12:24 PM  
**To:** O'Lone, Mary <OLone.Mary@epa.gov>  
**Cc:** Israels, Ken <Israels.Ken@epa.gov>  
**Subject:** West Oakland findings

Mary

**Deliberative Process / Ex. 5**

# **Deliberative Process / Ex. 5**

Richard

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

## Memorandum

To: Chairperson Karen Mitchoff and Members  
of the Mobile Source Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: November 20, 2017

Re: Update on Efforts to Further Reduce Emissions at the Port of Oakland and Former  
Oakland Army Base

---

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Port of Oakland (Port) is the fifth largest container port in the United States and the second largest in the State of California behind the combined ports of Los Angeles and Long Beach. Established in 1927, the Port is home to 18 ship berths, 36 container cranes, two rail yards, approximately 500 pieces of cargo handling equipment and approximately 2,500 trucks. In 2016, the Port moved 2.37 million 20-foot equivalent units (TEU) in to and out of the Bay Area. This flow of containers is associated with over \$600 billion in goods that are linked to approximately 32% of the jobs in the Bay Area.

The Port and former Oakland Army Base redevelopment project (OAB) border the West Oakland and in 2008, the California Air Resources Board (ARB) in partnership with the Bay Area Air Quality Management District (Air District) conducted a health risk assessment (HRA) to determine what emission sources were contributing to poor air quality in that community. That HRA indicated that the health risk from toxic air pollution (primarily diesel particulate matter, or DPM) in West Oakland was three times higher than any other community in the Bay Area. Based on the results of the HRA, the Air District Board of Director's instructed staff to utilize all available options at its disposal to reduce this health risk. The Air District in partnership with the ARB, United States Environmental Protection Agency, Port, industry, and local community instituted policies and actions which:

- Devised the Marine Air Quality Improvement Plan which targets an 85% reduction in DPM emissions by 2020;
- Instituted and enforced regulations on drayage trucks, harbor craft, off-road equipment, oceangoing vessels and cargo handling equipment;
- Instituted and enforced a noncompliant truck ban under the Port's authority;
- Performed real-time monitoring of emissions in the West Oakland community;
- Invested \$33 million in grant funding to initially retrofit 1,319 trucks and to subsequently replace an additional 627 trucks;

- Invested \$24.5 million to install shore side power at 15 berths at the Port.

These efforts, in combination with implementation of ARB regulations requiring emissions reductions from cargo handling equipment, drayage trucks, refrigerated transportation units, oceangoing vessels, harbor craft and ships at berth, have significantly reduced DPM emissions from marine operations (by possibly as much as 76% according to latest inventory produced by the Port). Additionally, ARB regulations have led to significant emissions reductions from on-road truck traffic using the highways surrounding the West Oakland community.

While this is good news, the science around the health risk posed by DPM has changed significantly since 2008. Recent changes to the guidelines governing the assessment of health risk, developed by the California Office of Environmental Health Hazard Assessment (OEHHA), have increased the health risk from DPM by a factor of approximately 3 to 4 times of those originally used in the 2008 HRA. This means that while DPM emissions have been reduced significantly, remaining emissions have a greater impact on the community's health than what was previously understood.

## DISCUSSION

Recognizing that there is an increased health risk from DPM and that the Air District's Community Air Risk Evaluation (CARE) current regional risk projections show that West Oakland remains the most highly impacted community in the Bay Area relative to exposure to toxic air contaminants, Air District staff initiated an inquiry during summer 2016 to assess how emissions might be further reduced from Port maritime operations.

This effort included updating the equipment inventories for the Port, trying to understand what may be developed at OAB, reviewing the planning frameworks at the local, state and federal levels to determine how an equipment replacement project integrates with those plans, examining how the authorities of the various regulatory agencies (Port, City of Oakland, ARB, etc.) might be used to reduce emissions, looking at initiatives at other California ports and conducting a comprehensive evaluation of feasible technologies that can be employed to get further emissions reductions. As part of this effort the Air District met with representatives from the City of Oakland, Port, ARB, Metropolitan Transportation Commission, Alameda County Transportation Commission and the Alameda County Health Department for their input.

While the Air District did this work, the former OAB continued to be redeveloped. This new activity triggers California Environmental Quality Act (CEQA) mitigation requirements for the developer, City of Oakland and Port. It is important that these requirements be effectively implemented to adequately address the possible impacts that additional DPM from this project may have on the West Oakland community.

As part of this report staff will update the Committee on the results of its evaluation of feasible technologies that can be employed to get further emissions reductions, efforts to ensure DPM reductions from the current development at the OAB and next steps to engage the community and industry to finalize an expenditure plan targeted at reducing health risk from mobile sources operating in and around the Port of Oakland and OAB.

BUDGET CONSIDERATION / FINANCIAL IMPACT

None.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Karen Schkolnick  
Reviewed by: Damian Breen

XAVIER BECERRA  
Attorney General of California  
SALLY MAGNANI  
Senior Assistant Attorney General  
SUSAN S. FIERING (SBN 121621)  
Supervising Deputy Attorney General  
ROSE B. FUA (SBN 119757)  
MARY S. THARIN (SBN 293335)  
Deputy Attorneys General  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550  
Telephone: (510) 879-0190  
Fax: (510) 622-2270  
E-mail: Rose.Fua@doj.ca.gov  
*Attorneys for the State of California, by and through  
Xavier Becerra, Attorney General*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**OAKLAND BULK & OVERSIZED  
TERMINAL, LLC,**

Plaintiff,

v.

**CITY OF OAKLAND, ET AL.,**

Defendants.

Case No. 16-cv-07014-VC

**BRIEF OF AMICUS CURIAE, STATE  
OF CALIFORNIA, BY AND THROUGH  
XAVIER BECERRA, ATTORNEY  
GENERAL**

Date: January 10, 2018  
Time: 10:00 a.m.  
Court: No. 4, 17th Floor  
Judge: Honorable Vince Chhabria

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1 Amicus Curiae, the State of California, by and through Xavier Becerra, Attorney General,  
 2 presents this brief to address significant issues of statewide importance concerning the ability of  
 3 state and local governments to use their police powers to protect public health, public safety, and  
 4 the environment.

## 5 INTRODUCTION

6 State and local governments have broad powers to protect the health and safety of their  
 7 residents. Oakland Bulk Oversized Terminal (“OBOT”) is attempting to expand the reach of  
 8 federal preemption and the dormant Commerce Clause doctrine to prevent Oakland from  
 9 exercising its police power to protect some of its most vulnerable residents from dangerous  
 10 pollution. This unwarranted expansion threatens both local and state authority and should be  
 11 rejected.

12 After initially announcing that it did not intend to handle coal at a proposed bulk terminal,  
 13 OBOT has done an about-face and now claims its contract allows for coal, and the City is  
 14 powerless to stop it from handling coal due to federal law and the Constitution. Federal  
 15 preemption and dormant Commerce Clause jurisprudence do not support these arguments, which  
 16 would improperly shackle efforts to protect the well-being of California’s residents. The City’s  
 17 ordinance is neither preempted nor constitutionally prohibited. It is a legitimate, non-  
 18 discriminatory exercise of authority under a local government’s traditional police power to  
 19 protect the health and safety of its residents. As discussed below, OBOT’s federal claims are  
 20 without merit.

## 21 BACKGROUND

### 22 A. The Proposed Terminal and the Ordinance

23 This case involves the efforts of a local government to protect some of its most at-risk  
 24 residents: individuals living in West Oakland, who are predominantly people of color and low  
 25 income, and who have been disproportionately affected by a legacy of pollution. In 2013,  
 26 OBOT’s predecessor and the City of Oakland entered into a contract concerning the potential  
 27 development of a terminal facility on City property in West Oakland, formerly known as the  
 28 Oakland Army Base (“Terminal”). The contract made no mention of coal, and the dangers posed

1 by the handling of coal were never described or investigated pursuant to the environmental  
 2 review process for the Terminal under the California Environmental Quality Act (“CEQA”).  
 3 Neither the 2002 Environmental Impact Report for the project, nor a 2012 Initial  
 4 Study/Addendum discussed coal. In fact, in December 2013, OBOT publicly denied that it  
 5 intended to handle coal at the Terminal, stating that it was “publicly on record as having no  
 6 interest or involvement in the pursuit of coal-related operations at the former Oakland Army  
 7 Base.”<sup>1</sup>

8 On April 7, 2015, a newspaper article revealed that OBOT had entered into private  
 9 negotiations to dedicate 49 percent of the Terminal to coal,<sup>2</sup> which would commit the Terminal to  
 10 handling an estimated five to ten million tons of coal<sup>3</sup> each year for the foreseeable future. In  
 11 response to OBOT’s about-face, the City invoked section 3.4.2 of its 2013 Development  
 12 Agreement with OBOT, which explicitly allowed the City to enact protective measures if it  
 13 determined that OBOT’s operations created conditions “substantially dangerous” to the health  
 14 and safety of its current or future occupants, users, or adjacent neighbors. In July 2016, after a  
 15 public hearing, and considering all the evidence presented, including evidence that handling coal  
 16 at the Terminal would cause an increase in pollution, the City determined that storing and  
 17 handling coal at the Terminal would be “substantially dangerous,” and passed Ordinance No.  
 18 13385 (“Ordinance”) prohibiting the handling and storage of coal or petcoke at any bulk materials  
 19 facility in the City. Apart from the limitations on handling coal and petcoke, the Ordinance does  
 20 not otherwise affect any part of OBOT’s operations.

21  
 22  
 23 <sup>1</sup> Monthly Updates on the Oakland Global Trade and Logistics Center Project, OAKLAND  
 24 GLOBAL NEWS, December 2013, at 4, [https://cdn.theatlantic.com/assets/media/files/att\\_3\\_-\\_december\\_2013\\_oakland\\_global\\_newsletter.pdf](https://cdn.theatlantic.com/assets/media/files/att_3_-_december_2013_oakland_global_newsletter.pdf).

25 <sup>2</sup> Project Could Transform Local Coal Market to International, RICHFIELD REAPER, April  
 26 7, 2015, [http://www.richfieldreaper.com/news/local/article\\_e13121f0-dd67-11e4-b956-3ff480cc1929.html](http://www.richfieldreaper.com/news/local/article_e13121f0-dd67-11e4-b956-3ff480cc1929.html).

27 <sup>3</sup> Chafe, Zoe, Analysis of Health Impacts and Safety Risks and Other Issues/Concerns  
 28 Related to the Transport, Handling, Transloading, and Storage of Coal and/or Petroleum Coke  
(Petcoke) in Oakland and at the Proposed Oakland Bulk & Oversized Terminal, June 22, 2016, at  
 10, <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak059408.pdf>.

1 In December 2016, OBOT sued the City claiming breach of contract and arguing that the  
2 Ordinance is preempted by a variety of federal laws and prohibited by the dormant Commerce  
3 Clause of the United States Constitution.

#### 4 **B. The Health and Safety Threat to Residents of West Oakland**

5 Two critical facts justified the City's exercise of its police power in this matter. First, the  
6 handling of coal creates significant pollution in the form of toxic heavy metals<sup>4</sup> and particulate  
7 matter ("PM"). Particulate matter can lodge deep in the lungs and is linked to cardiac illness,  
8 stroke, respiratory illness and asthma.<sup>5</sup> The Bay Area Air Quality Management District  
9 ("BAAQMD") has called particulate matter "the pollutant that poses *by far* the greatest health  
10 risk to Bay Area residents."<sup>6</sup> "Researchers have not been able to establish a safe threshold for  
11 population exposure to PM,"<sup>7</sup> and even short term exposures to PM can cause harm.<sup>8</sup> The City's  
12 consultant estimated the "Terminal would still emit each day 98 pounds of PM 10 and 14.8  
13 pounds of PM 2.5 from fugitive coal dust" even after using best practices/controlled operations.<sup>9</sup>

14 The second critical fact is that the Terminal will be located on the western edge of West  
15 Oakland, which will bear the brunt of any pollution. The West Oakland community carries the  
16 unwanted distinction of being near the top of the list of California communities overburdened by  
17 pollution. This is a community primarily of low-income people of color, surrounded by

18 <sup>4</sup> The City determined that "coal contains toxic heavy metals including mercury, arsenic,  
19 and lead, and exposure to these toxic heavy metals is linked to cancer and birth defects."  
20 Ordinance, 8.60.020(B)(1)(a). There are no known safe levels of exposure to these toxins. Public  
21 Health Advisory Panel on Coal in Oakland, An Assessment of the Health and Safety Implications  
22 of Coal Transport through Oakland, June 14, 2016, at v, [www2.oaklandnet.com/w/oak059227](http://www2.oaklandnet.com/w/oak059227)  
23 ("Panel Assessment").

24 <sup>5</sup> BAAQMD, Understanding Particulate Matter, November 2012, at 2-4,  
25 [http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Plans/PM%20Planning/Par](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Plans/PM%20Planning/ParticulatesMatter_Nov%207.ashx)  
26 [ticulatesMatter\\_Nov%207.ashx](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Plans/PM%20Planning/ParticulatesMatter_Nov%207.ashx) ("BAAQMD Report").

27 <sup>6</sup> *Id.* at 4 (emphasis in original).

28 <sup>7</sup> *Id.* at 5.

<sup>8</sup> Panel Assessment, *supra* note 4, at 18.

<sup>9</sup> Oakland's Notice of Motion and Motion for Summary Judgment, or in the Alternative,  
Partial Summary Judgement, and Opposition to Plaintiff's Motion for Summary Judgment, p.18.

1 significant pollution sources.<sup>10</sup> Particulate matter is already a concern in the Bay Area overall<sup>11</sup>  
 2 and the West Oakland community's exposure to PM, in particular, is three times higher than other  
 3 communities in the Bay Area.<sup>12</sup> And PM's disproportionate health impact is significant:  
 4 According to a 2008 study, in West Oakland, the estimated lifetime potential cancer risk due to  
 5 PM emissions from Port operations alone is about seven times that of the region as a whole – 200  
 6 excess cancers per million, compared to 30 excess cancers per million.<sup>13</sup> West Oakland has some  
 7 of the highest emergency room and hospitalization rates in Oakland and Alameda County, due to  
 8 issues related to air pollution, including childhood asthma, overall asthma, and congestive heart  
 9 failure.<sup>14</sup> The collective impact of the various risks faced by West Oakland residents, including  
 10 pollution, is that the life expectancy for residents of West Oakland is 12.4 years less than  
 11 residents in more affluent Oakland neighborhoods.<sup>15</sup>

12 These potential health and environmental impacts were never analyzed as part of the CEQA  
 13 review for the Terminal because OBOT's predecessor did not disclose its intent to handle coal.  
 14 Ultimately, despite federal and state laws intended to protect residents from air pollution, the  
 15 handling of coal and petcoke at the Terminal would increase pollution in West Oakland, adding to  
 16 the burden of an already overburdened population. While controls, if available, could reduce the  
 17 emissions somewhat, they would not eliminate them.<sup>16</sup> And, even with controls, there may be  
 18 exceedances and violations that would increase the risk to West Oakland residents.

19 \_\_\_\_\_  
 20 <sup>10</sup> These include the Port, which is the fifth busiest container port in the United States; two  
 21 rail yards owned by Union Pacific and Burlington Northern and Santa Fe; numerous trucking-  
 22 based distribution centers; and three interstate freeways, the I-580, I-880, and I-980, which,  
 23 together with the rail tracks that feed the railyards, essentially form the boundaries of the  
 neighborhood. See California Air Resources Board, Diesel Particulate Matter Health Risk  
Assessment for the West Oakland Community, December 2008, at 1, Figure 1,  
<https://www.arb.ca.gov/ch/communities/ra/westoakland/documents/westoaklandreport.pdf>.  
 (“CARB Report”).

24 <sup>11</sup> BAAQMD Report, *supra* note 5, at 5.

25 <sup>12</sup> CARB Report, *supra* note 10 at 2.

26 <sup>13</sup> *Id.* at 2, 4.

27 <sup>14</sup> Alameda County Public Health Department, East and West Oakland Health Data  
Existing Cumulative Health Impacts, September 3, 2015, at 9,  
<http://www.acphd.org/media/401560/cumulative-health-impacts-east-west-oakland.pdf>.

28 <sup>15</sup> *Id.* at 14, 18.

<sup>16</sup> According to the City's findings, the emission risks cannot be sufficiently mitigated to  
 an acceptable level because “...there are not sufficiently effective, safe means to prevent the  
 release of fugitive coal dust...” Ordinance, 8.60.020(B)(1)(c).

## ARGUMENT

The State of California, and municipalities therein, retain sovereign police powers which allow the adoption of a “wide range of laws in order to protect the health, safety and welfare” of their residents. *Pac. Merch. Shipping Ass’n v. Goldstene*, 639 F.3d 1154, 1162 (9th Cir. 2011). With particular relevance here, the Supreme Court has recognized that “[l]egislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power.” *Huron Portland Cement Co. v. City of Detroit, Mich.*, 362 U.S. 440, 442 (1960). “In the exercise of that power, the states and their instrumentalities may act, in many areas of interstate commerce and maritime activities, concurrently with the federal government.” *Id.* This sovereign power must be given due weight in any analysis of federal preemption and dormant Commerce Clause claims.

### I. THE DORMANT COMMERCE CLAUSE DOES NOT INVALIDATE THE ORDINANCE

The dormant Commerce Clause does not invalidate every exercise of local power that affects the flow of commerce between the States. Rather, localities “retain broad power to legislate protection for their citizens in matters of local concern such as public health.” *Great Atl. & Pac. Tea Co. v. Cottrell*, 424 U.S. 366, 371 (1976) (internal quotations and citations omitted); *see also Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 306 (1997) (noting the Court’s “traditional recognition of the need to accommodate state health and safety regulation in applying dormant Commerce Clause principles”).

Under the dormant Commerce Clause, state and local laws that (1) regulate extraterritorially or (2) discriminate against interstate commerce are subject to a form of strict scrutiny. *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579 (1986). Laws that regulate extraterritorially are quite rare; A state or local regulation will only fit into this narrow category if it controls commerce occurring wholly outside the regulating jurisdiction. *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989). Laws that discriminate against interstate commerce, on the other hand, are those that protect local economic interests from outside competition. *Dep’t. of Rev. of Ky. v. Davis*, 553 U.S. 328, 338 (2008).

1 If a challenged law neither regulates extraterritorially nor discriminates against interstate  
 2 commerce, courts apply the deferential *Pike* balancing test. *Pike v. Bruce Church, Inc.*, 397 U.S.  
 3 137, 142 (1970). Under that test, the law survives unless its “burden on interstate commerce  
 4 clearly exceeds the local benefits.” *Brown-Forman Distillers Corp.*, 476 U.S. at 579. Laws  
 5 “frequently survive this *Pike* scrutiny.” *Department of Revenue of Ky.*, 553 U.S. at 339.

6 Under a proper analysis, the Ordinance withstands challenges under the dormant Commerce  
 7 Clause since it does not 1) regulate extraterritorially, 2) put out-of-state interests at a disadvantage  
 8 as compared to substantially similar in-state interests, or 3) place an undue burden on interstate  
 9 commerce that outweighs its benefits. Indeed, the Ordinance is a legitimate exercise of well-  
 10 recognized local police power to protect health and safety.

#### 11 **A. The Ordinance Does Not Regulate Extraterritorially**

12 OBOT misstates modern dormant Commerce Clause jurisprudence by arguing that the  
 13 Ordinance directly regulates interstate commerce because it allegedly blocks the interstate rail  
 14 transportation of coal and petcoke for marine export through Oakland. OBOT Memorandum in  
 15 Support of Motion for Summary Judgment (“OBOT Br.”) at 11-16. The “test” OBOT posits and  
 16 then purports to apply bears no resemblance to the actual rule of law for direct regulation. In fact,  
 17 laws only “directly regulate” interstate commerce if they control commerce occurring *wholly*  
 18 *outside* the regulating jurisdiction, i.e., are extraterritorial regulations. *Healy*, 491 U.S. at 336;  
 19 *see also Brown-Forman Distillers Corp.*, 476 U.S. at 582–83 (describing direct regulation as one  
 20 state projecting its legislation into another); *Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S.  
 21 644, 669 (2003) (“*Walsh*”) (declining to strike down rebate requirement because it did not amount  
 22 to extraterritorial regulation). The concern in these rare cases is that a state has reached into  
 23 another sovereign state to regulate commercial activity even though it has no nexus to the  
 24 regulating state.

25 Illustrating this point, the Supreme Court has found extraterritorial regulation when one  
 26 state’s law controls prices in another state’s market. *See, e.g., Healy*, 491 U.S. at 337-38  
 27 (invalidating Connecticut statute because it had “the practical effect of controlling Massachusetts  
 28 prices”); *see also Walsh*, 538 U.S. at 669 (rejecting extraterritorial regulation claim where

1 challenged law did not “regulate the price of any out-of-state transaction”). The Ninth Circuit  
 2 similarly invalidated a Nevada law that, in practical effect, would have required the National  
 3 Collegiate Athletic Association to use Nevada procedural rules for enforcement proceedings with  
 4 no nexus to Nevada. *Nat’l Collegiate Athletic Ass’n v. Miller*, 10 F.3d 633, 639 (9th Cir. 1993)  
 5 (invalidating state law because it “could control the regulation of the integrity of a product in  
 6 interstate commerce that occurs wholly outside Nevada’s borders”); *see also Sam Francis Found.*  
 7 *v. Christies, Inc.*, 784 F.3d 1320, 1323 (9th Cir. 2015) (invalidating state law because it regulated  
 8 commercial transactions taking place wholly outside the state’s borders).

9 Here, in contrast, the Ordinance only prohibits the handling and storage of coal and petcoke  
 10 at bulk facilities *within Oakland*, and does not control any commerce occurring wholly outside  
 11 Oakland’s borders. By definition, this is not extraterritorial regulation. *See Sam Francis Found.*,  
 12 at 1324 (discussing several cases finding *no* extraterritorial regulation where laws regulated “*in-*  
 13 *state conduct* with allegedly significant out-of-state practical effects”) (emphasis in original); *see*  
 14 *also Pharm. Research & Mfrs. of Am. v. Cnty. of Alameda*, 768 F.3d 1037, 1043 (9th Cir. 2014)  
 15 (rejecting extraterritorial regulation claim where challenged ordinance imposed no requirements  
 16 on actions outside the regulating county). Further, the fact that the Ordinance is a prohibition on  
 17 handling of two particular commodities does not change the applicable legal rule. *See* OBOT Br.  
 18 15-16. Courts have rejected extraterritorial regulation challenges to prohibitions and, in so doing,  
 19 have applied the same rule as in other cases—namely asking whether the law controls wholly out-  
 20 of-state commerce. *See, e.g., Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729  
 21 F.3d 937, 950 (9th Cir. 2013) (ban on sale, in California, of foie gras produced by force-feeding  
 22 upheld because it regulated only sales in California); *Cotto Waxo Co. v. Williams*, 46 F.3d 790,  
 23 794 (8th Cir. 1995) (ban on sale, in Minnesota, of petroleum-based sweeping compounds did not  
 24 reach extraterritorially because it did not necessarily require out-of-state commerce to be  
 25 conducted according to in-state terms).

26 Finally, OBOT’s argument that the Ordinance is “directed specifically” at interstate  
 27 commerce likewise fails. OBOT Br. at 12. The Supreme Court rejected this legal theory in  
 28 *Walsh*, where the Court upheld a Maine statute imposing certain requirements on pharmaceutical

1 manufacturers related to in-state sales, despite the fact that the regulated manufacturers were all  
 2 outside of Maine and, thus, the sales involved interstate commerce. 538 U.S. at 669-70. Indeed,  
 3 “there is nothing unusual or unconstitutional per se about a state or county regulating the in-state  
 4 conduct of an out-of-state entity when the out-of-state entity chooses to engage the state or county  
 5 through interstate commerce.” *Cnty. of Alameda*, 768 F.3d at 1043-44. Accepting OBOT’s  
 6 argument that the Ordinance is invalid because it “directly regulates” commerce would lead to an  
 7 untenable result, namely, the abrogation of state and local police powers in any circumstance  
 8 involving commodities that flow in interstate commerce. Such an extension would directly  
 9 contravene the definition of “direct regulation” and would also fly in the face of well-established  
 10 law. *See, e.g., Ass’n des Eleveurs*, 729 F.3d at 948-49 (“A statute is not invalid merely because it  
 11 affects in some way the flow of commerce between the States.”) (internal quotation omitted).  
 12 OBOT’s extraterritorial regulation claim thus fails.

### 13 **B. The Ordinance Does Not Discriminate Against Interstate Commerce**

14 Laws that discriminate under the Commerce Clause are those “regulatory measures  
 15 designed to benefit in-state economic interests by burdening out-of-state competitors.”  
 16 *Department of Revenue of Ky.*, 553 U.S. at 337–38. Such laws constitute “simple economic  
 17 protectionism” and are thus invalid unless they can pass a form of strict scrutiny. *City of*  
 18 *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). When determining whether a law imposes  
 19 prohibited differential treatment, courts must compare the law’s impact on “substantially similar  
 20 entities,” meaning entities that engage in “actual or prospective competition...in a single market.”  
 21 *General Motors Corp.*, 519 U.S. at 298, 300.

22 Here, the Ordinance does not discriminate against outside interests in favor of competing  
 23 local interests, as OBOT argues. OBOT Br. at 16-17. First, the Ordinance regulates the handling  
 24 and storage of coal and petcoke at bulk materials facilities evenhandedly, applying identically to  
 25 in-state and out-of-state companies that own bulk facilities in Oakland. Thus, a California  
 26 company seeking to operate a bulk facility in Oakland is limited in the same manner as any out-  
 27 of-state company seeking to do the same. This is not discrimination under the dormant  
 28 Commerce Clause. *See, e.g., Cnty. of Alameda*, 768 F.3d at 1041 (“[A law] that treats all private

1 companies exactly the same does not discriminate against interstate commerce ....”). Second, the  
 2 Ordinance regulates the handling of certain substances (coal and petcoke) within Oakland equally  
 3 regardless of where those substances originate. *See Minnesota v. Clover Leaf Creamery Co.*, 449  
 4 U.S. 456, 471–72 (1981) (upholding state statute banning plastic milk containers because law  
 5 applied “without regard to whether the milk, the containers, or the sellers are from outside the  
 6 State”).

7 Further, the Ordinance’s limited exemptions for the use of coal and petcoke by certain  
 8 local non-commercial or manufacturing facilities are not relevant because these facilities do not  
 9 operate in the same competitive market as OBOT. These exempted facilities do not compete with  
 10 OBOT in any way and, in fact, OBOT itself characterizes them as operating in a different market.  
 11 *See* OBOT Br. at 17 (describing exempted facilities as “local interests that are not engaged in the  
 12 interstate rail transport for export of coal...”). Because the Ordinance does not benefit local  
 13 economic interests at the expense of substantially similar out-of-state interests, it is not  
 14 discriminatory under the dormant Commerce Clause.

### 15 **C. The Ordinance Does Not Unduly Burden Interstate Commerce**

16 Where a challenged law does not regulate extraterritorially or discriminate against interstate  
 17 commerce, courts apply the deferential balancing test articulated by the U.S. Supreme Court in  
 18 *Pike*, 397 U.S. at 142. Under the *Pike* test, a state or local law “will be upheld unless the burden  
 19 imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits.”  
 20 *Id.* This “clearly excessive” standard is a heavy one to meet. The Ninth Circuit has found that, to  
 21 surmount the *Pike* test, “the burdens of the statute must so outweigh the putative benefits as to  
 22 make the statute unreasonable or irrational.” *Alaska Airlines, Inc. v. City of Long Beach*, 951  
 23 F.2d 977, 983 (9th Cir. 1991). As a result of this high burden, courts have invalidated laws under  
 24 *Pike* in only a “small number” of cases. *Nat’l Ass’n of Optometrists & Opticians v. Harris*, 682  
 25 F.3d 1144, 1148 (9th Cir. 2012).

26 As a preliminary matter, OBOT has not satisfied the “critical requirement for proving a  
 27 violation of the dormant Commerce Clause...that there must be a *substantial burden on interstate*  
 28 *commerce.*” *Id.* (emphasis in original). OBOT attempts to allege a burden by invoking cases that

involved laws which undermined the need for national uniformity in the physical configuration of modes of interstate transportation. OBOT Br. at 17-20. However, these rare cases are inapplicable here because the Ordinance does not regulate rail transportation, and does not require a change in physical configuration of trains when they cross borders. *See Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 447-48 (1978) (“narrow” holding invalidating restrictions on truck length); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 529-30 (1959) (invalidating truck mudguard regulations while recognizing that “[t]his is one of those cases—few in number—where local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce”); *S. Pac. Co. v. State of Ariz. ex rel. Sullivan*, 325 U.S. 761, 775 (1945) (invalidating state-wide requirements for train length).

Unlike the laws invalidated in OBOT’s cases, the Ordinance governs only the handling of certain commodities in bulk material facilities within Oakland, and does not require railroads or trucks to have specific physical configurations. OBOT offers no authority for the proposition that such bulk material facilities demand the kind of national uniformity that is required for regulations governing entire rail systems or truck fleets. To accept that proposition—which would mean that New York, Miami and Oakland must all impose uniform rules on bulk material facilities—would undermine local authorities’ ability to protect their residents from particular harms. But the Commerce Clause leaves that authority intact. *See Huron Portland Cement Co.*, 362 U.S. at 442.

Indeed, the Supreme Court has noted that “safety measures carry a strong presumption of validity when challenged in court” even where they materially impact interstate commerce, *Bibb*, 359 U.S. at 523–24, and the Ninth Circuit has held that “protection of our environment has repeatedly been recognized as a legitimate and important state interest,” and has acknowledged the “especially powerful interest in controlling the harmful effects of air pollution.” *Pacific Merchant Shipping Ass’n*, 639 F.3d at 1180–81. Consistent with this presumption of validity, the Ninth Circuit has repeatedly rejected arguments that health and safety regulations unduly burden interstate commerce. *See, e.g., Yakima Valley Mem’l Hosp. v. Washington State Dep’t of Health*, 731 F.3d 843, 848 (9th Cir. 2013) (upholding regulations that “are predicated on a safety-related

1 purpose”); *Union Pac. R. Co. v. California Pub. Utilities Comm’n*, 346 F.3d 851, 872 (9th Cir.  
 2 2003) (upholding regulations where the state’s legitimate interest was “even minimally”  
 3 furthered); *Kleenwell Biohazard Waste & Gen. Ecology Consultants, Inc. v. Nelson*, 48 F.3d 391,  
 4 399 (9th Cir. 1995) (upholding regulatory scheme with goal of “protecting the health and safety  
 5 of Washington residents”).

6 The incidental and insubstantial burden alleged by OBOT—the inability to unload two  
 7 particular materials (coal and petcoke) in Oakland at bulk materials facilities—does not come  
 8 close to being “clearly excessive” as compared to the Ordinance’s local benefits. Notably, like  
 9 the prohibition against plastic milk containers upheld in *Clover Leaf Creamery*, 449 U.S. at 473,  
 10 the Ordinance’s prohibition is limited to materials Oakland has found cause harm to the City and  
 11 its residents. Similarly, in *Exxon v. Governor of Maryland*, the Supreme Court upheld  
 12 Maryland’s prohibition against refiners operating retail gasoline stations, despite the fact that this  
 13 burden would fall exclusively on interstate commercial activity because all refiners happened to  
 14 be located outside of Maryland. 437 U.S. 117, 125-26 (1978). The Court recognized that this  
 15 limited prohibition, which Maryland adopted to protect its consumers from price gouging,  
 16 allowed *other* interstate commerce to continue—namely the operation of retail stations by  
 17 independent (non-refiner) out-of-state businesses. *Id.* Here, the Ordinance is limited to  
 18 prohibiting the harmful practices of bulk terminals handling and storing coal and petcoke, and  
 19 allows other interstate commerce to continue unaffected.

20 The Ordinance is an example of a city properly exercising its police power for precisely the  
 21 reason this power exists: to protect the safety and well-being of its residents. The findings relied  
 22 upon by the City are not inconclusive or speculative. The Ordinance protects the residents of  
 23 West Oakland from additional harmful air pollution and other negative health and safety impacts.  
 24 In this context, courts are “not inclined to second-guess the empirical judgments of lawmakers  
 25 concerning the utility of legislation.” *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 92  
 26 (1987) (internal quotations omitted); *see also Raymond Motor Transp., Inc.*, 434 U.S. at 449. The  
 27 Ordinance does not violate the dormant Commerce Clause and should be upheld.  
 28

## II. THE ORDINANCE IS NOT PREEMPTED BY FEDERAL LAW

Where a state or local law was promulgated pursuant to the government's police powers in order to protect its residents from serious health risks, courts are reluctant to find preemption. Consistent with the respect for state sovereignty, the two cornerstones of preemption analysis are: 1) Congressional purpose, and 2) the presumption against preemption of state police powers. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Thus, courts assume "that the historic police powers of the States were not to be superseded by [a federal statute] unless that was the clear and manifest purpose of Congress." *Id.* (internal quotations omitted).

### A. The Ordinance is Not Preempted by the Interstate Commerce Commission Termination Act

The Interstate Commerce Commission Termination Act ("ICCTA") grants the Surface Transportation Board ("STB") exclusive jurisdiction over "transportation by rail carriers," and states that the "remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b); *New York & Atl. Ry. Co. v. Surface Transp. Bd.*, 635 F.3d 66, 71–72 (2d Cir. 2011). However, "the federal interest in rail transportation does not entirely sweep away the exercise of the state's regulatory police powers when such regulation merely implicates rail transportation. Even as to powers that are exclusively federal, it does not follow that any and all state regulations touching on [that power] are preempted." *Friends of Eel River v. N. Coast R.R. Auth.*, 3 Cal. 5th 677, 720, 399 P.3d 37 (2017) (internal quotation omitted); *see also Island Park, LLC v. CSX Transp.*, 559 F.3d 96, 104 (2d Cir. 2009) ("[A]lthough ICCTA's pre-emption language is unquestionably broad, it does not categorically sweep up all state regulation that touches upon railroads...").

Courts have interpreted the plain language of the ICCTA to categorically preempt state or local laws that operate either 1) to deny a railroad the ability to conduct its operations or proceed with activities the STB has authorized, or 2) to regulate matters directly regulated by the STB, including the construction, operation, and abandonment of rail lines. 49 U.S.C. § 10501(b); *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 332 (5th Cir. 2008). State actions that do

not fall into one of these categories may be preempted “as-applied” only when they would have the effect of preventing or unreasonably interfering with railroad transportation. *Id.* Preemption applies only to state laws that may reasonably be said to have the effect of managing or governing rail transportation, while allowing continued application of state laws that have “a more remote or incidental effect on rail transportation.” *Fla. E. Coast Ry. Co. v. City of W. Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001).

**1. The Ordinance is Not Categorically Preempted Because It Does Not Apply to a Rail Carrier.**

The ICCTA grants the STB exclusive jurisdiction over “transportation by rail carriers.” 49 U.S.C. § 10501(b)(1). OBOT’s argument that the ICCTA preempts the City’s ability to regulate operations at the Terminal fails for a simple reason: OBOT is not a rail carrier. OBOT has taken no steps to gain status as a rail carrier, does not allege that it is a rail carrier in its complaint or in its motion, and does not hold itself out as a rail carrier in its public-facing media.<sup>17</sup> The ICCTA, therefore, does not apply to OBOT.

In an effort to cloak itself under the guise of a “rail carrier” to invoke ICCTA preemption, OBOT initially claimed that it is constructing a rail line and will *operate* a rail carrier, namely Oakland Global Rail Enterprises (“OGRE”). (First Amended Complaint at 2, ¶4). But OGRE is also not a rail carrier. In fact, it has specifically asserted to the STB that it is *not* a rail carrier, stating that, “rather than acting as a rail common carrier, it would only be providing contract switching services.” *Oakland Global Rail Enterprise, LLC—Operation Exemption—Line of Union Pac. R.R. Co. & B.N.S.F. Railway Company*, FD 35822, 2014 WL 3673414, at \*1 (STB July 23, 2014).

Moreover, even if OGRE were a rail carrier, ICCTA preemption will not apply to the Terminal if it is not operated or controlled by a rail carrier, regardless of whether rail transportation is used up to the point that the materials arrive or depart from the facility. In *Hi Tech Trans, LLC v. New Jersey*, the Third Circuit rejected an argument similar to OBOT’s. 382

<sup>17</sup> On its webpage, for example, OBOT describes itself as a developer and master tenant. “OBOT: Our Team,” <http://obotjv.com/our-team> (last accessed December 6, 2017).

1 F.3d 295, 308–09 (3d Cir. 2004). There, a solid waste disposal facility entered into a license  
 2 agreement with a rail carrier to deliver waste, and then tried to use the ICCTA to skirt state  
 3 permitting regulations for its facilities. The *Hi Tech* court rejected the preemption claim,  
 4 recognizing that if “Hi Tech’s reasoning is accepted, any nonrail carrier’s operations would come  
 5 under the exclusive jurisdiction of the STB if, at some point in a chain of distribution, “it handles  
 6 products that are eventually shipped by rail by a rail carrier.” *Id.* at 309. The court determined  
 7 that “[t]he mere fact that the [rail carrier] ultimately uses rail cars to transport the...debris Hi  
 8 Tech loads does not morph Hi Tech’s activities into ‘transportation by rail carrier.’” *Id.*

9 Other courts and the STB have also refused to recognize ICCTA preemption where the  
 10 transloading facility was operated by a non rail carrier. *See Florida East Coast Ry. Co.*, 266 F.3d  
 11 at 1332–36 (construction-aggregate distribution center, operated by a non rail carrier lessee of  
 12 railway property, did not constitute rail transportation and was not governed by the ICCTA); *New*  
 13 *York & Atlantic Ry. Co.*, 635 F.3d at 73 (waste-transfer facility, operated by a non rail carrier that  
 14 was not acting as an agent for any rail carrier, did not constitute rail transportation and was not  
 15 governed by the ICCTA); *Milford, Mass.—Petition for Declaratory Order*, FD 34444, 2004 WL  
 16 1802301 (STB Aug. 11, 2004) (despite contractual agreement with a rail carrier, the transloading  
 17 of steel by a non rail carrier in a manner that was not being offered as part of common carrier  
 18 services for the public did not constitute rail transportation and was not governed by the ICCTA);  
 19 *Town of Babylon & Pinelawn Cemetery—Petition for Declaratory Order*, FD 35057, 2008 WL  
 20 4377804 (STB Sept. 24, 2008) (transloading of construction and demolition debris by non rail  
 21 carrier tenant of railway property did not constitute rail transportation and was not governed by  
 22 the ICCTA); *Valero Refining Company—Petition for Declaratory Order*, FD 36036, 2016 WL  
 23 5904757, at \*4 (STB Sept. 20, 2016) (transloading facility and railroad tracks operated by non  
 24 rail carrier was not subject to STB jurisdiction or preemption).

25 The same is true here as well. Like OBOT, hundreds of thousands of entities throughout  
 26 the State of California contract with rail carriers to have products shipped by rail. To transform  
 27 these entities into “rail carriers,” and to then prevent the State and local entities from exercising  
 28 their police powers to protect health and safety, ignores the intent of Congress in enacting the

1 ICCTA, which was to preempt state law remedies that would have the effect of managing or  
 2 governing rail transportation regulated and authorized by the STB, not the states' traditional  
 3 exercise of police power.

4 **2. The Ordinance is Not Preempted Because It is a Public Health and**  
 5 **Safety Measure that Does Not Unreasonably Interfere with Rail**  
 6 **Transportation.**

7 Where a state or local law does not deny a railroad the ability to conduct its operations or  
 8 proceed with activities the STB has authorized, and does not regulate matters directly regulated  
 9 by the STB, it is preempted only to the extent that it would have the effect of preventing or  
 10 unreasonably interfering with railroad transportation. *New Orleans & Gulf Coast Ry. Co. v.*  
 11 *Barrois*, 533 F.3d at 332. Courts have declined to find preemption of state laws protecting public  
 12 health and safety when those laws “are settled and defined, can be obeyed with reasonable  
 13 certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the  
 14 exercise of discretion on subjective questions.” *N.Y. Susquehanna & W. Ry. Corp v. Jackson*, 500  
 15 F.3d 238, 253-54 (3d Cir. 2007) (citing *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638,  
 643 (2d Cir. 2005).

16 The Ordinance meets these standards. It is a public health and safety measure intended to  
 17 protect residents from increases of harmful air pollution from coal and petcoke. The requirements  
 18 of the Ordinance are settled and defined, can be easily obeyed, and do not require the exercise of  
 19 discretion. Under the Ordinance, railroads (and other forms of transportation) may continue to  
 20 operate as they always have: they can carry coal, run coal trains through Oakland, and even stop  
 21 coal trains in Oakland or other locations. Thus, the Ordinance does not unreasonably interfere  
 22 with the operation of rail carriers and is not preempted as applied.

23 **B. The Ordinance is Not Preempted by the Hazardous Materials**  
 24 **Transportation Act or the Shipping Act of 1984.**

25 Neither the Hazardous Materials Transportation Act (“HMTA”) nor the Shipping Act of  
 26 1984 (“Shipping Act”) has any application here, and those Acts do not preempt the Ordinance.

27 First, OBOT contends that the Ordinance is expressly preempted by the HMTA, 49 U.S.C.  
 28 § 5125(b)(1)(A), because it usurps the authority granted to the Secretary of Transportation to

1 designate materials as hazardous. OBOT Br. at 28-29. OBOT offers no case law to support its  
 2 broad assertion that the HMTA preempts regulations governing the handling and storage of *all*  
 3 substances that pose a health threat, including those, such as coal and petcoke, *not classified* as  
 4 “hazardous” under the HMTA. Such a broad reading of the statute’s preemptive reach is not  
 5 warranted and undermines the State’s interests in regulating substances that have not been  
 6 classified as hazardous under the HMTA. Further, OBOT’s argument is contrary to the  
 7 overwhelming body of case law that requires the courts to presume against preemption and  
 8 narrowly construe express preemption provisions. *See Medtronic, Inc.*, 518 U.S. at 485;  
 9 *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 518 (1992). Finally, the Ordinance has no impact  
 10 whatsoever on the transportation of materials classified as hazardous under the HMTA, and thus  
 11 does not frustrate Congress’ intent to create a uniform national system governing the handling of  
 12 these substances. *Cf. Chlorine Inst., Inc. v. California Highway Patrol*, 29 F.3d 495, 496, 497-  
 13 98 (9th Cir. 1994) (preempting state requirement that shipments of HMTA-classified hazardous  
 14 materials be accompanied by escort vehicles); *S. Pac. Transp. Co. v. Pub. Serv. Comm’n of*  
 15 *Nevada*, 909 F.2d 352, 358 (9th Cir. 1990) (preempting state permitting requirements for HMTA-  
 16 hazardous materials).

17 Second, OBOT claims that the Ordinance is preempted by the Shipping Act because it  
 18 allegedly conflicts with the Shipping Act’s provision stating that a marine terminal operator  
 19 (“MTO”) may not “agree with another marine terminal operator or with a common carrier to . . .  
 20 unreasonably discriminate in the provision of terminal services to, a common carrier or ocean  
 21 tramp.” 46 U.S.C. § 41106(1); OBOT Br. at 29. This provision of the Shipping Act, however,  
 22 simply does not apply here. OBOT has not established that it is an MTO, which is defined by the  
 23 Shipping Act as “a person engaged in the United States in the business of providing wharfage,  
 24 dock, warehouse, or other terminal facilities in connection with a common carrier.” 46 U.S.C. §  
 25 40102(14); *see Auction Block Co. v. Fed. Mar. Comm’n*, 606 F. App’x 347, 348 (9th Cir. 2015)  
 26 (dismissing Shipping Act claim where operator was non-MTO in relation to facility at issue).  
 27 Nor has OBOT shown that the Ordinance would result in any discrimination in terminal services  
 28 to a common carrier, since the Ordinance’s provisions apply evenhandedly to all entities. *See W.*

*Holding Grp., Inc. v. The Mayagüez Port Comm’n*, 611 F. Supp. 2d 149, 189 (D.P.R. 2009) (“Discrimination connotes treating one party unfairly when compared to the favorable treatment received by another party.”). Finally, because OBOT can comply with both the Ordinance and the Shipping Act, conflict preemption does not apply.

In short, because neither the HMTA nor the Shipping Act apply to the Ordinance, there is no basis for preemption under these statutes.

### CONCLUSION

The Oakland Ordinance is a narrow ban on the handling of coal and petcoke at bulk materials facilities in the City. It is the City’s response to the plight of its residents who will be subject to significant additional pollution from coal and who are currently already unfairly burdened by industrial pollution. The Ordinance is a proper exercise of Oakland’s police powers and is not preempted by federal law or barred by the Constitution and should be upheld by the Court.

Dated: December 8, 2017

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
SALLY MAGNANI  
Senior Assistant Attorney General  
SUSAN S. FIERING  
Supervising Deputy Attorney General  
MARY THARIN  
Deputy Attorney General

/s/ Rose B. Fua  
ROSE B. FUA  
Deputy Attorney General  
*Attorneys for Xavier Becerra, Attorney  
General of the State of California*

## Appointment

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 8/15/2017 2:55:44 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]

**Subject:** Declined: Initial discussion with Earthjustice re Port of Oakland case

**Location:** DCRoomARN2528/DC-ARN-OCR-Rooms **Conference Line/Code / Ex. 6**

**Start:** 8/17/2017 7:00:00 PM

**End:** 8/17/2017 8:00:00 PM

**Show Time As:** Busy

Johahna will attend

## Appointment

---

**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]  
**Sent:** 8/15/2017 2:55:19 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]

**Subject:** Meeting Forward Notification: Initial discussion with Earthjustice re Port of Oakland case  
**Location:** DCRoomARN2528/DC-ARN-OCR-Room **Conference Line/Code / Ex. 6**

**Start:** 8/17/2017 7:00:00 PM  
**End:** 8/17/2017 8:00:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

O'Lone, Mary has forwarded your meeting request to additional recipients.

### Meeting

Initial discussion with Earthjustice re Port of Oakland case

### Meeting Time

Thursday, August 17, 2017 3:00 PM-4:00 PM.

### Recipients

Johnson, Johahna

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

---

Sent by Microsoft Exchange Server

## Appointment

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 8/9/2017 5:25:57 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]

**Subject:** Accepted: Initial discussion with Earthjustice re Port of Oakland case

**Location:** DCRoomARN2528/DC-ARN-OCR-Rooms **Conference Line/Code / Ex. 6**

**Start:** 8/17/2017 7:00:00 PM

**End:** 8/17/2017 8:00:00 PM

**Show Time As:** Busy

## Appointment

---

**From:** Strauss, Alexis [Strauss.Alexis@epa.gov]  
**Sent:** 8/9/2017 4:58:37 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]

**Subject:** Accepted: Initial discussion with Earthjustice re Port of Oakland case

**Location:** DCRoomARN2528/DC-ARN-OCR-Rooms **Conference Line/Code / Ex. 6**

**Start:** 8/17/2017 7:00:00 PM

**End:** 8/17/2017 8:00:00 PM

**Show Time As:** Busy

Message

---

**From:** Farrell, Ericka [Farrell.Ericka@epa.gov]  
**Sent:** 8/8/2017 8:14:25 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Automatic reply: Availability of Earthjustice for Port of Oakland meeting

I am out of the office on Thursday, August 3, 2017. I will return to the office on Thursday, August 10, 2017. If you need immediate assistance you may contact Debra McGhee at 202-564-4646.

Ericka Farrell  
202-564-0717

Message

---

**From:** Paul Cort [pcort@earthjustice.org]  
**Sent:** 8/8/2017 5:25:40 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Request for Teleconference for Oakland Army Base Complaint

Hi Katsumi:

I wrote to Ryan Fitzpatrick at DOT last night. We are looking forward to meeting about the complaint, but we are not available on either the 9<sup>th</sup> or 10<sup>th</sup>. We could join a call on Thursday, August 17<sup>th</sup> anytime between noon and 4 pm Pacific. Second choice would be Monday August 14<sup>th</sup> 10-11 am or after 2 pm Pacific. If neither of those dates work, let us know and we can look for times the following week.

Thank you.

--Paul

Paul Cort  
Staff Attorney  
Earthjustice California Office  
50 California Street, Suite 500  
San Francisco, CA 94111  
T: 415.217.2077  
F: 415.217.2040  
earthjustice.org

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**From:** Keeler, Katsumi [mailto:Keeler.Katsumi@epa.gov]  
**Sent:** Tuesday, August 08, 2017 7:31 AM  
**To:** Paul Cort  
**Subject:** FW: Request for Teleconference for Oakland Army Base Complaint

Mr. Cort, DOT representatives will also attend this meeting and 11:00 a.m. (PDT) on Thursday, August 10, appears to be the best time all around. Will this be good for you? Please let me know. Thanks.

---

**From:** Keeler, Katsumi  
**Sent:** Tuesday, August 08, 2017 10:07 AM  
**To:** [pcort@earthjustice.org](mailto:pcort@earthjustice.org)  
**Subject:** Request for Teleconference for Oakland Army Base Complaint

Hello, Mr. Cort, this is Katsumi Keeler from the U.S. EPA's External Civil Rights Compliance Office. I'm writing in regard to the complaint we received from Earthjustice against the City of Oakland and the Port of Oakland (EPA File Nos. 13R-17-R9 and 14R-17-R9). We would like to set up an initial teleconference with Earthjustice to discuss this complaint.

Please let me know if you would be available for a one-hour teleconference at one of the following times:

Wednesday, August 9, 8:00 a.m. (PDT)

Wednesday, August 9, 9:00 a.m. (PDT)

Thursday, August 10, 11:00 a.m. (PDT)

Thursday, August 10, 1:30 p.m. (PDT)

If you have any questions, please simply respond to this email message or call me at 202-564-2347. Thank you.

Katsumi Keeler



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347

Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Please consider the environment before printing this email.

Message

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**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 8/8/2017 1:16:42 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** FW: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)  
**Attachments:** Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017.pdf  
**Importance:** High

---

**From:** Dorka, Lilian  
**Sent:** Tuesday, July 18, 2017 6:58 PM  
**To:** ygarcia@earthjustice.org; pcort@earthjustice.org; Aadeyeye@earthjustice.org  
**Cc:** Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Charles.james@dot.gov; Jang, Deeana (OST) <deeana.jang@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Harrison, Brenda <Harrison.Brenda@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>  
**Subject:** RE: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)  
**Importance:** High

Dear Ms. Garcia, Mr. Cort, and Ms. Adeyeye:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.  
Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel  
202-564-9649  
WJC-N Room 2450



U.S. Department of Transportation  
Office of the Secretary of Transportation



U.S. Environmental Protection Agency  
External Civil Rights Compliance Office  
Office of General Counsel

July 18, 2017

Ms. Yana Garcia  
Mr. Paul Cort  
Ms. Adenike Adeyeye  
Earthjustice  
50 California Street  
Suite 500  
San Francisco, CA 94111

**Re: Notification of Acceptance for Investigation of Administrative Complaint (DOT# 2017-0093, EPA File Nos. 13R-17-R9 (City of Oakland) and 14R-17-R9 (Board of Port Commissioners and Port of Oakland))**

Dear Ms. Garcia, Mr. Cort, and Ms. Adeyeye:

This is to notify you that the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), have accepted for investigation the complaint filed by Earthjustice on behalf of West Oakland Environmental Indicators Project (Complainant) against the City of Oakland (City) and the Board of Port Commissioners and Port of Oakland (the Board and Port are collectively referred to as the Port). The complaint was received on April 5, 2017, and alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 C.F.R. Part 21) and EPA (40 C.F.R. Part 7).

Pursuant to DOT's and EPA's nondiscrimination regulations, DOCR and ECRCO conduct preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate agency. *See* 49 C.F.R. § 21.11(c) and 40 C.F.R. § 7.120(d)(1). Complaints must meet the Agencies' jurisdictional requirements to be accepted for investigation. *See* 49 C.F.R. § 21.11(c) and 40 C.F.R. §§ 7.15 and 7.120(b). After careful consideration, DOCR and ECRCO have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of

color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

2. Whether the City's and Port's methods, including their public participation processes, for approving and authorizing new development and expanded activities at the Port of Oakland and Oakland Army Base subject the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

The investigation will be conducted in accordance with DOT's *External Civil Rights Complaint Processing Manual* and EPA ECRCO's *Case Resolution Manual*. The decision to investigate the issues above does not constitute a decision on the merits of the complaint. DOCR and ECRCO are neutral fact-finders and will begin a joint process to gather the relevant information, discuss the matter further with you (or your designee) and the recipients, as appropriate, and determine next steps utilizing the Agencies' internal procedures. In the intervening time, DOT and EPA will provide the recipients with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of the letter. *See, e.g.*, 40 C.F.R. § 7.120(d)(1)(ii-iii).

This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R. § 21.11(d); 40 C.F.R. § 7.120(d)(2). Accordingly, DOCR and ECRCO are willing to discuss, at any point during the process, offers to informally resolve the complaint. We may also be contacting both you (or your designee) and the recipients in the near future to discuss potential interest in informal resolution, including ADR. For a more detailed explanation of DOCR's and ECRCO's complaint and resolution processes, we invite you to review DOCR's *External Civil Rights Complaint Processing Manual*, available at [https://www.transportation.gov/sites/dot.gov/files/docs/externalcomplaintmanual-final\\_1.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/externalcomplaintmanual-final_1.pdf), and ECRCO's *Case Resolution Manual*, available at [https://www.epa.gov/sites/production/files/2017-01/documents/final\\_epa\\_ogc\\_ecrco\\_crm\\_january\\_11\\_2017.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation.

Ms. Garcia, Mr. Cort, and Ms. Adeyeye

Mr. Fitzpatrick can be reached at (202) 366-1979, or [ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov). Ms. Farrell can be reached at (202) 564-0717, or [farrell.ericka@epa.gov](mailto:farrell.ericka@epa.gov).

Sincerely,



Charles E. James, Sr.  
Director  
Office of the Secretary of Transportation  
Departmental Office of Civil Rights  
U.S. Department of Transportation



Lilian S. Dorka  
Director  
External Civil Rights Compliance Office  
Office of General Counsel  
U.S. Environmental Protection Agency

cc:

Deborah Jordan  
Acting Deputy Regional Administrator  
Acting Deputy Civil Rights Official  
EPA, Region 9

Kenneth Redden  
Acting Assistant General Counsel  
Civil Rights and Finance Law Office

Lauren Brand  
Associate Administrator  
Office of Intermodal System Development  
Maritime Administration

Daryl Hart  
Director  
Office of Civil Rights  
Maritime Administration

Message

---

**From:** Covington, Jeryl [Covington.Jeryl@epa.gov]  
**Sent:** 6/1/2017 5:37:01 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** RE: Oakland ???

Good!!!

---

**From:** Keeler, Katsumi  
**Sent:** Thursday, June 01, 2017 1:36 PM  
**To:** Covington, Jeryl <Covington.Jeryl@epa.gov>  
**Subject:** RE: Oakland ???

Yes, that's what was so hard. We looked everywhere, including the CAFR. Then I went on the City of Oakland website and dug through their Brownfields program. Bingo! Oh, also, this grant was accepted in January 2017, so it didn't show up.

---

**From:** Covington, Jeryl  
**Sent:** Thursday, June 01, 2017 1:32 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** Oakland ???

Even though you identified the approval to accept the \$\$\$; did you review the CAFR to ensure that the City executed this council's approval?

Jeryl W. Covington  
Environmental Protection Specialist  
U.S. Environmental Protection Agency  
Office of General Counsel|External Civil Rights Compliance Office  
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524  
Mail Code: 2310A  
Washington, DC 20460  
Desk: (202) 564-7713  
Fax: (202) 565-0196  
[covington.jeryl@epa.gov](mailto:covington.jeryl@epa.gov)

Message

---

**From:** Covington, Jeryl [Covington.Jeryl@epa.gov]  
**Sent:** 6/1/2017 5:31:59 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Oakland ???

Even though you identified the approval to accept the \$\$\$; did you review the CAFR to ensure that the City executed this council's approval?

Jeryl W. Covington  
Environmental Protection Specialist  
U.S. Environmental Protection Agency  
Office of General Counsel|External Civil Rights Compliance Office  
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524  
Mail Code: 2310A  
Washington, DC 20460  
Desk: (202) 564-7713  
Fax: (202) 565-0196  
[covington.jeryl@epa.gov](mailto:covington.jeryl@epa.gov)

Message

---

**From:** Farrell, Ericka [Farrell.Ericka@epa.gov]  
**Sent:** 5/31/2017 7:44:24 PM  
**To:** Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**Subject:** Automatic reply: City of Oakland probable recipient

I am out of the office for the rest of day. I will return to the office on Thursday, June 1, 2017.

Ericka Farrell  
202-564-0717



# City of Oakland

Office of the City Clerk  
Oakland City Hall  
1 Frank H. Ogawa Plaza  
Oakland, California 94612  
LaTonda Simmons, City  
Clerk

## Legislation Details (With Text)

**File #:** 16-0554      **Version:** 1      **Name:** EPA Coalition Brownfields Assessment Grants  
**Type:** City Resolution      **Status:** Passed  
**File created:** 12/28/2016      **In control:** Concurrent Meeting of the Oakland Redevelopment Successor Agency and the City Council  
**On agenda:** 1/17/2017      **Final action:** 1/17/2017  
**Title:** Subject: EPA Coalition Brownfields Assessment Grants  
From: Oakland Public Works Department  
Recommendation: Adopt A Resolution Authorizing The City Administrator To Accept And Appropriate One Hundred Ten Thousand Dollars (\$110,000.00) From A United States Environmental Protection Agency Coalition Grant Under The Brownfields Grant Program For Assessment Of Petroleum Products And Hazardous Substances In Soil And Groundwater In The International Boulevard Corridor And Execute A Memorandum Of Agreement With The East Bay Brownfields Assessment Grant Coalition  
**Sponsors:** Oakland Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. View Report, 2. 86561 CMS

Date	Ver.	Action By	Action	Result
1/17/2017	1	Concurrent Meeting of the Oakland Redevelopment Successor Agency and the City Council	Adopted	
1/10/2017	1	*Public Works Committee	Approve as Amended the Recommendation of Staff, and Forward	Pass

Subject:EPA Coalition Brownfields Assessment Grants  
From: Oakland Public Works Department  
Recommendation: Adopt A Resolution Authorizing The City Administrator To Accept And Appropriate One Hundred Ten Thousand Dollars (\$110,000.00) From A United States Environmental Protection Agency Coalition Grant Under The Brownfields Grant Program For Assessment Of Petroleum Products And Hazardous Substances In Soil And Groundwater In The International Boulevard Corridor And Execute A Memorandum Of Agreement With The East Bay Brownfields Assessment Grant Coalition

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/27/2017 8:45:17 PM  
**To:** O'Lone, Mary [olone.mary@epa.gov]  
**Subject:** RE: West Oakland air monitoring stations already exist!

No, sorry, I think we're just focusing on different points (and I'm in too much of a hurry). My point is that mitigation measures are nice, but the proof that they are working is in the air monitoring. And an HRA based on the air monitoring. I will look closer at your messages tomorrow morning.

---

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**Sent:** Wednesday, September 27, 2017 4:38 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: West Oakland air monitoring stations already exist!

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Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
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(202) 564-4992

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**Sent:** Wednesday, September 27, 2017 4:35 PM  
**To:** O'Lone, Mary <OLone.Mary@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>  
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Johahna <Johnson.Johahna@epa.gov>

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**Sent:** Wednesday, September 27, 2017 3:36 PM

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Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

004329 2020-10-29

Phone: 202-564-2347

Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

1200 Pennsylvania Avenue, N.W.  
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Washington, D.C. 20460

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Message

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**Sent:** 9/27/2017 6:42:13 PM  
**To:** Rhines, Dale [rhines.dale@epa.gov]  
**Subject:** FW: 2017-09-26 Meeting sign-in sheet - City of Oakland, Port of Oakland, U.S. DOT, and U.S. EPA  
**Attachments:** 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Dale, just fyi.

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 2:37 PM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; O'Lone, Mary <olone.mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; 'Daryl.Hart@dot.gov' <Daryl.Hart@dot.gov>; 'eric.shen@dot.gov' <eric.shen@dot.gov>; 'rachel.kizito-ramos@dot.gov' <rachel.kizito-ramos@dot.gov>; 'yvette.rivera@dot.gov' <yvette.rivera@dot.gov>; 'charles.james@dot.gov' <charles.james@dot.gov>; 'ryan.fitzpatrick@dot.gov' <ryan.fitzpatrick@dot.gov>; 'erva.cockfield@dot.gov' <erva.cockfield@dot.gov>; 'mbee@oaklandcityattorney.org' <mbee@oaklandcityattorney.org>; 'ccappio@oaklandnet.com' <ccappio@oaklandnet.com>; 'dwan@portoakland.com' <dwan@portoakland.com>; 'mheffes@portoakland.com' <mheffes@portoakland.com>; 'bparker@oaklandcityattorney.org' <bparker@oaklandcityattorney.org>; 'atorrence@jenner.com' <atorrence@jenner.com>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** 2017-09-26 Meeting sign-in sheet - City of Oakland, Port of Oakland, U.S. DOT, and U.S. EPA

Attached is the sign-in sheet for the City of Oakland/Port of Oakland/U.S. DOT/U.S. EPA meeting on 9/26/17.  
Attended, but not listed on the sign-in sheet:

Kevin Minoli	<a href="mailto:minoli.kevin@epa.gov">minoli.kevin@epa.gov</a>
Alexis Strauss	<a href="mailto:strauss.alexis@epa.gov">strauss.alexis@epa.gov</a>
Desean Garnett	<a href="mailto:garnett.desean@epa.gov">garnett.desean@epa.gov</a>
Richard Grow	<a href="mailto:grow.richard@epa.gov">grow.richard@epa.gov</a>



2017-09-26  
Meeting City of O...

Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 10/11/2017 8:17:39 PM  
**To:** O'Lone, Mary [olone.mary@epa.gov]  
**Subject:** RE: West Oakland air monitoring stations already exist!

Si.

---

**From:** O'Lone, Mary  
**Sent:** Wednesday, October 11, 2017 4:16 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: West Oakland air monitoring stations already exist!

Katsumi-

So maybe to show Lillian we closed the loop, respond to her email about taking it offline & say you & I are talked/corresponded and we don't think we need to have a group meeting.

You were flagging for us the good news that there are a series of PM2.5 monitors out there already that will provide exposure information for West Oakland. The monitoring data could be used to verify the recipients' claims of reductions that have taken place already & the monitors should be in place to monitor what happens as a result of the change in land use at the Oakland Army Base (from primarily commercial to industrial) and the appearance of the Post-Panamax OGVs.

That is what you were saying – right?

Thanks, Mary

Mary M. O'Lone  
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Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, October 11, 2017 1:22 PM  
**To:** O'Lone, Mary <OLone.Mary@epa.gov>  
**Subject:** RE: West Oakland air monitoring stations already exist!

Sorry, I meant Post-Panamax.

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I think R9 is not crazy about the air monitoring idea, but I don't know how else to determine what the West Oakland Community is being exposed to. Most of the other health risk information is from modeling, which is one step removed from the gold standard of actual air monitoring. The City and the Port claim the air is improving – and I agree. But now, we have the change in land use at the Oakland Army Base (from primarily commercial to industrial) and the appearance of the Post-Panama OGVs.

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**From:** O'Lone, Mary

**Sent:** Wednesday, October 11, 2017 12:29 PM

**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>

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Thanks, Mary

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**Sent:** Wednesday, September 27, 2017 5:12 PM

**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>

**Subject:** RE: West Oakland air monitoring stations already exist!

Are you trying to tell us:

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PM 2.5 is a NAAQS pollutant, right? Or are you saying those 3 monitors you found are separate monitors from the NAAQS monitoring network?

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Katsumi Keeler  
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External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

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Are you trying to tell us:

Good news -- there are a bunch of PM2.5 monitors already operating in West Oakland! This means there is existing monitoring infrastructure which will be able to help determine if the plan they develop pursuant to the Agreement is really working.

I read what you were saying as the main point of that provision was to get them to do air monitoring which they are already doing. So I was responding to that by saying the main point of that provision is not to get them to do air monitoring – it is to have them agree to develop a comprehensive mitigation plan that EPA & DOT will review.

PM 2.5 is a NAAQS pollutant, right? Or are you saying those 3 monitors you found are separate monitors from the NAAQS monitoring network?

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 4:45 PM  
**To:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>  
**Subject:** RE: West Oakland air monitoring stations already exist!

No, sorry, I think we're just focusing on different points (and I'm in too much of a hurry). My point is that mitigation measures are nice, but the proof that they are working is in the air monitoring. And an HRA based on the air monitoring. I will look closer at your messages tomorrow morning.

---

**From:** O'Lone, Mary  
**Sent:** Wednesday, September 27, 2017 4:38 PM  
**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>  
**Subject:** RE: West Oakland air monitoring stations already exist!

Are you responding to a question from someone else?  
Your email isn't responsive to my 2 emails that I can tell.

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 4:35 PM  
**To:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Temple, Kurt

<Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>

**Subject:** RE: West Oakland air monitoring stations already exist!

Yes, I think the BAAQMD site is the one represented by the icon with the white background. The 3 City sites have a blue background and they don't belong to the Bay Area District. Two of them are much closer to the Port and one is actually in the Port. Recall TCEQ's difficulties with acquiring a monitoring site and installing infrastructure in Beaumont. It's already been done in West Oakland.

---

**From:** O'Lone, Mary

**Sent:** Wednesday, September 27, 2017 4:11 PM

**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>

**Subject:** RE: West Oakland air monitoring stations already exist!

Katsumi-

I don't think R9 forgot about those type of air monitors. I think they were talking about the types of air quality compliance monitoring & mitigation monitoring recommended by BAAQMD in the August 2017 OAB Action List that Richard circulated to everyone as an example several weeks ago. But we can confirm with Ken.

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 3:36 PM

**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>

**Subject:** West Oakland air monitoring stations already exist!

The City of Oakland, with assistance from the BAAQMD, is already running 3 ambient air monitoring stations in West Oakland for PM<sub>2.5</sub>. The results are available to the public 24/7 via a dedicated website (with a 72-hour lag for processing and validation), and they actually speciate it to show how much of it is diesel particulate matter. I found this link in a news article from 2014, so maybe everyone had forgotten about it (or just didn't realize their importance to the current discussion). The blurb states that these sites were set up to present "air quality information collected before and during the construction of the Oakland Global Trade and Logistics Center at the former Oakland Army Base." This is, in large part, what we were asking for in the Agreement with respect to air monitoring.

See the screen shot and link below:

<< OLE Object: Picture (Device Independent Bitmap) >>

[https://sites.google.com/a/ngem.com/oab\\_aqm/aqm-3](https://sites.google.com/a/ngem.com/oab_aqm/aqm-3)

---

<< OLE Object: Picture (Device Independent Bitmap) >>

Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 5/17/2017 4:53:30 PM  
**To:** Farrell, Ericka [Farrell.Ericka@epa.gov]  
**Subject:** RE: City of Oakland

Can we do this on Tuesday? I'm off on Monday.

---

**From:** Farrell, Ericka  
**Sent:** Wednesday, May 17, 2017 12:35 PM  
**To:** Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>  
**Cc:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: City of Oakland

Okay thanks. I will be sending out a meeting invite.

Ericka Farrell  
Case Manager  
External Civil Rights Compliance Office  
202-564-0717

---

**From:** Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]  
**Sent:** Wednesday, May 17, 2017 12:23 PM  
**To:** Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>  
**Cc:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>  
**Subject:** RE: City of Oakland

Good morning Ericka:

Monday afternoon and most of Tuesday would work well for us.

Ryan

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** Farrell, Ericka [<mailto:Farrell.Ericka@epa.gov>]  
**Sent:** Wednesday, May 17, 2017 12:22 PM  
**To:** Fitzpatrick, Ryan (OST)  
**Cc:** Keeler, Katsumi  
**Subject:** City of Oakland

Good Afternoon Ryan,

Just wondering if you have any time on your calendar next week to discuss Jurisdiction. I am aware that DOT has not made a determination to date, but this will be a discussion to allow you to know where we are and if you have anything to share with us at the time.

Ericka S. Farrell  
Case Manager  
External Civil Rights Compliance Office  
202-564-0717

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 12/7/2017 8:55:02 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** Oakland Army Base.pptx  
**Attachments:** Oakland Army Base.pptx



Oakland Army  
Base.pptx

Kurt, a large part of this is no longer applicable because I was doing it during the JR as a simple explanation for management. However, it might be interesting to you.

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/27/2017 6:02:26 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

That I will do on my own responsibility. But I'll wait until I see Lilian again because I just noticed that SHE forgot to sign it.

---

**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 2:00 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Sure, it's proof. But we just need to keep it as proof. Anyway – follow your instincts. If you believe the expectation is that we will send a PDF, go for it.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** -- Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:58 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I didn't hear that. In fact, I think I heard Dale say this morning in the meeting that we can send it out. Also, I think, for records purposes, an actual copy of the sheet is best. That's called proof in legal circles, I believe.

---

**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 1:56 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I thought Lilian promised that we'd type it. . . .

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 1:55 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

So I can send it out as is? I think that's the best way. Why single him out as attending only partially is my thought.

---

**From:** McGhee, Debra

**Sent:** Wednesday, September 27, 2017 1:49 PM

**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>

**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Katsumi- since Kevin showed up to the meeting with a dozen business cards to distribute, I'd say it is his intent to make his contact information available. I would therefore include him. Thanks for handling this.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 1:47 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>

I'm sending this to you in case you want to send it out yourself.

Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/31/2017 9:27:43 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** The one I like  
**Attachments:** ATT24930

- B. The complaint alleged that the activities of the City and Port in approving construction of specific industrial facilities had had a disproportionately detrimental effect on air quality in and around West Oakland. The complaint further alleged that the City and Port had failed to engage in meaningful public participation prior to approving the construction of new industrial facilities. Finally, the complaint alleged that the City and Port had caused disproportionate negative health impacts among the overwhelmingly minority residents of the West Oakland.



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: keeler.katsumi@epa.gov

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/27/2017 5:58:25 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I didn't hear that. In fact, I think I heard Dale say this morning in the meeting that we can send it out. Also, I think, for records purposes, an actual copy of the sheet is best. That's called proof in legal circles, I believe.

---

**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 1:56 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

I thought Lilian promised that we'd type it. . . .

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:55 PM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

So I can send it out as is? I think that's the best way. Why single him out as attending only partially is my thought.

---

**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 1:49 PM  
**To:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Katsumi- since Kevin showed up to the meeting with a dozen business cards to distribute, I'd say it is his intent to make his contact information available. I would therefore include him. Thanks for handling this.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ *Martin Luther King, Jr. , 18th April, 1959*

---

**From:** Keeler, Katsumi

**Sent:** Wednesday, September 27, 2017 1:47 PM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>

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Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/27/2017 5:55:00 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

So I can send it out as is? I think that's the best way. Why single him out as attending only partially is my thought.

---

**From:** McGhee, Debra  
**Sent:** Wednesday, September 27, 2017 1:49 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

Katsumi- since Kevin showed up to the meeting with a dozen business cards to distribute, I'd say it is his intent to make his contact information available. I would therefore include him. Thanks for handling this.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, September 27, 2017 1:47 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

<< File: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf >>  
I'm sending this to you in case you want to send it out yourself.

Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/27/2017 5:47:16 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Emailing - 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf  
**Attachments:** 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf



2017-09-26  
Meeting City of O...

I'm sending this to you in case you want to send it out yourself.

## Appointment

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/21/2017 7:52:28 PM  
**To:** Minoli, Kevin [Minoli.Kevin@epa.gov]  
**Subject:** Accepted: FW: Meeting with Oakland (Port and City) Re: Informal Resolution of the Title VI Complaint (Call in number: **Conference Line/Code / Ex. 6**)  
**Location:** EPA Headquarters, 1200 Pennsylvania Ave. NW, Washington, DC (William Jefferson Clinton Building), 4th Floor, Room 4045  
**Start:** 9/26/2017 5:00:00 PM  
**End:** 9/26/2017 7:00:00 PM  
**Show Time As:** Busy

Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 4/24/2017 10:09:13 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Fw: Oakland jurisdiction

fyi

---

**From:** Temple, Kurt  
**Sent:** Monday, April 24, 2017 9:55 AM  
**To:** Farrell, Ericka  
**Cc:** Keeler, Katsumi  
**Subject:** RE: Oakland jurisdiction

Thanks

---

**From:** Farrell, Ericka  
**Sent:** Monday, April 24, 2017 9:53 AM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>  
**Cc:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Oakland jurisdiction

Good Morning Kurt,

I am reaching out to an OGC contact that Kevin suggested I speak with regarding the Brownfields grant but I also had a contact in the Brownfields office that I was going to contact as well.

Just trying to find out if the brownfields grant was given to the community or the state. If it was given to the community then Title VI enforcement will not apply.

Ericka Farrell  
Case Manager  
External Civil Rights Compliance Office  
202-564-0717

---

**From:** Temple, Kurt  
**Sent:** Monday, April 24, 2017 9:46 AM  
**To:** Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>  
**Cc:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>  
**Subject:** FW: Oakland jurisdiction

Ericka/ Katsumi: See below. Do we have anything new on the FFA front?

Kurt

---

**From:** Temple, Kurt  
**Sent:** Monday, April 24, 2017 9:44 AM

**To:** 'Fitzpatrick, Ryan (OST)' <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>

**Subject:** RE: Oakland jurisdiction

I don't know that we have anything solid at this point showing EPA funding for FY2017. We're having to dig deep here. I will check in with our Case Manager and circle back.

Kurt

---

**From:** Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]

**Sent:** Monday, April 24, 2017 9:39 AM

**To:** Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>

**Subject:** Oakland jurisdiction

Hey Kurt:

Any updates on EPA's jurisdictional analysis with regards to the City and Port of Oakland? We're still reviewing what I've come up with here, but it'd be helpful to know what EPA is seeing too.

Ryan

**Ryan N. Fitzpatrick, Esq.**

Lead Civil Rights Analyst

Departmental Office of Civil Rights

Office of the Secretary

U.S. Department of Transportation

W78-312

(202) 366-1979

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 4/20/2017 3:28:07 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Port of Oakland Title VI JR Review.pptx  
**Attachments:** Port of Oakland Title VI JR Review.pptx



Port of Oakland  
Title VI JR Revie...

Debra – Let's talk.

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 4/18/2017 7:00:19 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** FW: Port of Oakland funding  
**Attachments:** ATT10628

Debra, just cc'ing you. The Port of Oakland is a recipient. See Grant #99R06701

---

**From:** Keeler, Katsumi  
**Sent:** Tuesday, April 18, 2017 2:40 PM  
**To:** Farrell, Ericka <Farrell.Ericka@epa.gov>  
**Subject:**

<https://www.usaspending.gov/Pages/AdvancedSearch.aspx?sub=y&ST=C,G,L,O&FY=2017,2016,2015,2014&A=0&SS=USA&AA=6800&k=Oakland>



Katsumi Keeler  
Case Manager  
Office of Civil Rights  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 1201A  
Washington, D.C. 20460

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 4/13/2017 2:38:12 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** RE: Oakland complaint investigation DOT and EPA

I'll be there.

---

**From:** Temple, Kurt  
**Sent:** Thursday, April 13, 2017 10:33 AM  
**To:** O'Lone, Mary <OLone.Mary@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Oakland complaint investigation DOT and EPA

I am taking this call in my office if you wish to join me. Someone is in the conference room.

-----Original Appointment-----

**From:** Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]  
**Sent:** Tuesday, April 11, 2017 1:35 PM  
**To:** Fitzpatrick, Ryan (OST); Rivera, Yvette (OST); Temple, Kurt; Caro-Lopez, Howard (OST)  
**Subject:** Oakland complaint investigation DOT and EPA  
**When:** Thursday, April 13, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Teleconference

To discuss the Earthjustice complaint filed against the Port and City of Oakland, with DOT and EPA

**Conference Line/Code / Ex. 6**

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 4/12/2017 3:01:06 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** New West Oakland complaint  
**Attachments:** Beveridge, Brian and Gordon, Margaret Ltr \_ Re - Refer Admin Cmplnt \_ EPA Filce No \_ 05R-14-R9(YELLOW COPY)..pdf

Kurt, just fyi – Yes, the new Oakland complaint, 13R-17-R9 (City of Oakland), is from the same organization (West Oakland Environmental Indicators Project) that I dealt with in the Oakland OES complaint that I closed out in 2014. Closure letter is attached.



Beveridge, Brian  
and Gordon, Mar...

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 10 2014

**Return Receipt Requested**

Certified Mail#: 7004-1160-0002-3622-9575

**In Reply Refer to:**

EPA File No.: 05R-14-R9

Brian Beveridge, Co-Director  
 Margaret Gordon, Co-Director  
 West Oakland Environmental Indicators Project  
 349 Mandela Parkway  
 Oakland, California 94607

**Re: Referral of Administrative Complaint**

Dear Mr. Beveridge and Ms. Gordon:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is referring your administrative complaint filed against the City of Oakland (California), the Port of Oakland, Customs and Border Protection, and a private company named North American 3PL to the U.S. Department of Transportation (DOT). EPA's OCR received this administrative complaint from you on May 9, 2014. You generally alleged that the four entities named in the administrative complaint violated Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. See 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. See 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. See 40 C.F.R. §7.120(b)(1). Third, it must be received within 180 calendar days of the alleged discriminatory act. See 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. See 40 C.F.R. § 7.15.

OCR has carefully reviewed your complaint and concluded that none of the entities that you identify are current recipients of EPA grants that relate directly to the discrimination allegations. However, the U. S. Department of Transportation (DOT) has

**CONCURRENCES**

SYMBOL									1201A
SURNAME									
DATE									

## Appointment

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 9/20/2017 2:35:25 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Accepted: Preparation for September 26 Meeting with Oakland Port and City  
**Location:** Conference Call//ECRCO Conference Room  
**Start:** 9/22/2017 6:00:00 PM  
**End:** 9/22/2017 7:00:00 PM  
**Show Time As:** Busy

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/17/2017 6:44:25 PM  
**To:** Rhines, Dale [rhines.dale@epa.gov]  
**Subject:** FW: Confirming number: Initial discussion with Earthjustice re Port of Oakland case

---

**From:** Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]  
**Sent:** Monday, August 14, 2017 1:46 PM  
**To:** Grow, Richard <Grow.Richard@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>  
**Cc:** Strauss, Alexis <Strauss.Alexis@epa.gov>  
**Subject:** RE: Confirming number: Initial discussion with Earthjustice re Port of Oakland case

I sent the DOT conference line number to Earthjustice already for this meeting, we should go with that.

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** Grow, Richard [mailto:Grow.Richard@epa.gov]  
**Sent:** Monday, August 14, 2017 1:33 PM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>  
**Cc:** Strauss, Alexis <Strauss.Alexis@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>  
**Subject:** Confirming number: Initial discussion with Earthjustice re Port of Oakland case

ECRCO: I'm assuming we will use the conference line which Ryan Fitzpatrick sent out Friday for the initial call this coming Thursday at 3 pm EDT, noon PDT, with EarthJustice and WOEIP:

**Conference Line/Code / Ex. 6**

---

**From:** Keeler, Katsumi  
**Sent:** Wednesday, August 9, 2017 9:57 AM  
**To:** Keeler, Katsumi; Dorka, Lilian; Temple, Kurt; Rhines, Dale; Grow, Richard; O'Lone, Mary; Johnson, Johahna; Farrell, Ericka; Garnett, Desean

**Cc:** Strauss, Alexis

**Subject:** Initial discussion with Earthjustice re Port of Oakland case

**When:** Thursday, August 17, 2017 12:00 PM-1:00 PM.

**Where:** DCRoomARN2528/DC-ARN-OCR-Rooms

**Conference Line/Code / Ex. 6**

Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 1/17/2018 9:10:11 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]  
**CC:** Rhines, Dale [rhines.dale@epa.gov]  
**Subject:** Record of Contact - Contractor for Air Monitoring in West Oakland (01/17/18)  
**Attachments:** ATT99543

1/17/18, 1536 hours

I spoke by telephone to a woman identifying herself as L. Maile Smith, Project Manager for Northgate Environmental Management, Inc., 428 13<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, CA 94612. Personal Matters / Ex. 6

I advised her that the reason for my call was to inquire about when the next quarterly report would be published for the Air Quality Monitoring Program for the Oakland Army Base Redevelopment Project. She stated as follows:

1. The 3<sup>rd</sup> Quarter Report is still being reviewed by the City of Oakland. It will be posted as soon as the City completes its review.
2. The Project is a requirement of the City's Community Benefits Agreement. Ms. Smith stated that her impression was that the monitoring would continue through the operational period of the Redevelopment Project (possibly up to 60 years), and not merely during the construction itself.
3. Carbons are monitored only at AQM3, at the Prescott Elementary School.
4. Her staff review the monitoring data on a real-time basis. At one point, they observed a spike and determined that it was caused by dismantling work by Caltrans. Staff asked the Caltrans crew to make changes to their activities and that resolved the issue.
5. There were also spikes from fireworks on New Year's Eve.
6. For regional events that may cause exceedances, staff inquires to BAAQMD.



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: keeler.katsumi@epa.gov

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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004366 2020-10-29



Please consider the environment before printing this email.

Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/25/2017 3:06:56 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Re: Oakland

The template is for the longer term. The reason I picked Albuquerque is that you are familiar with it and it doesn't use the "separate process" language. Otherwise, we could use Beaumont.

---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 10:51:40 AM  
**To:** McGhee, Debra  
**Subject:** Re: Oakland

Yes, it's improving, but that's misleading. It's like saying Oakland residents used to cough 8 times a day in 2010 and now they only cough twice per day. The problem is, other Alameda County residents are not coughing at all.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 10:28:49 AM  
**To:** Keeler, Katsumi  
**Subject:** RE: Oakland

I haven't been able to get the Albuquerque agreement cleared by CRFLO. Mary was fiddling around with my wording and now she isn't in and I had promised to get the draft to the recipients today, so that is giving me a headache.

In any case I don't think there is sufficient similarity between the issues for that to be the template. Moreover, Lilian asked for bullets to "frame" the conversation about a resolution. So that sounds good to me. Maybe less torturous CRFLO review and more fruitful, situation-specific conversation.

I am currently reading the Port's defense.

They say they are actively engaged in an Energy Efficiency and Renewable Energy Study and installing infrastructure to provide clean shore power so that vessels can plug in while at berth.

Also, the Port says that the air quality is improving. Do we have any facts about that? Can we say for sure whether its getting better or worse for the neighbors?

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 10:13 AM

004368 2020-10-29

**To:** McGhee, Debra <mcghee.debra@epa.gov>

**Subject:** Re: Oakland

Here's what I'm thinking:

1. Use your Albuquerque settlement agreement as a template to create a settlement agreement for Oakland. For now, we just need one. We have to decide later if we need two. So can you just use Word to take your Albuquerque and replace all the Albuquerque and Bernalillos with Port of Oakland and City of Oakland? (Debra) This way, at any time, we can say we have a draft agreement, and we will also have a framework for the agreement. We also need to figure out if we are going to have one agreement or two.
2. From your notes of our conversation with the Complainants, let's create a list of the Complainant's wants. Can you do this? (Debra) I will review the complaint and try to figure out what they want from the complaint. (Katsumi) We can then put these two together and come up with the Complainant's issues list which incorporates what they expressed in the official complaint and the interview.
3. We already have R9's issues list, but Richard's thoughts and words need to be interpreted, so let me try to do that. (Katsumi)
4. We are still waiting for DOT's issues list, rights?
5. And we can talk later about ECRCO's issues list after I've researched a little more on what has been done by BAAQMD and CARB. (Katsumi)

What do you think? Then we just wait for DOT's issues list and incorporate that. I think we can get this done in a few of days.

---

**From:** McGhee, Debra

**Sent:** Friday, August 25, 2017 9:54:15 AM

**To:** Keeler, Katsumi

**Subject:** Oakland

Are you working today?

I don't have a plan to lay out to you at this time. I am trying to read through the documents, set up the case file, etc. We are going to try to settle. Lillian wants bullets defining the issues that will be addressed via settlement.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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---

**From:** Keeler, Katsumi

**Sent:** Friday, August 25, 2017 9:51 AM

**To:** McGhee, Debra <mcghee.debra@epa.gov>

**Subject:** Re:

What are you thinking on how we should proceed on the Oakland case? I don't know of any communications you've had with Ericka.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 8:47:34 AM  
**To:** Keeler, Katsumi  
**Subject:** RE:

Absolutely!

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 8:40 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:**

Are you working today?

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/25/2017 2:51:40 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
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External Civil Rights Compliance Office  
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**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 10:13 AM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Re: Oakland

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1. Use your Albuquerque settlement agreement as a template to create a settlement agreement for Oakland. For now, we just need one. We have to decide later if we need two. So can you just use

004371 2020-10-29

Word to take your Albuquerque and replace all the Albuquerque and Bernalillos with Port of Oakland and City of Oakland? (Debra) This way, at any time, we can say we have a draft agreement, and we will also have a framework for the agreement. We also need to figure out if we are going to have one agreement or two.

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---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 9:54:15 AM  
**To:** Keeler, Katsumi  
**Subject:** Oakland

Are you working today?

I don't have a plan to lay out to you at this time. I am trying to read through the documents, set up the case file, etc. We are going to try to settle. Lillian wants bullets defining the issues that will be addressed via settlement.

*Debra E. McGhee*  
Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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**Sent:** Friday, August 25, 2017 9:51 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** Re:

What are you thinking on how we should proceed on the Oakland case? I don't know of any communications you've had with Ericka.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 8:47:34 AM  
**To:** Keeler, Katsumi  
**Subject:** RE:

Absolutely!

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ *Martin Luther King, Jr. , 18th April, 1959*

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**From:** Keeler, Katsumi

**Sent:** Friday, August 25, 2017 8:40 AM

**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:**

Are you working today?

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/25/2017 2:42:59 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Fw: Clarifying: West Oakland proposed "Issue list"

Here's what Richard sent in for R9.

---

**From:** Grow, Richard  
**Sent:** Thursday, August 10, 2017 2:40 PM  
**To:** Keeler, Katsumi; Temple, Kurt  
**Cc:** Garnett, Desean; Farrell, Ericka  
**Subject:** Clarifying: West Oakland proposed "Issue list"

Sorry, my message was less than clear, here's my availability:

Tuesday (EDT) 11-1 or 2-3

Wednesday less jammed, anytime 11-6 (EDT) except 2-3

Richard

---

**From:** Keeler, Katsumi  
**Sent:** Thursday, August 10, 2017 11:33 AM  
**To:** Grow, Richard <Grow.Richard@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>  
**Cc:** Garnett, Desean <Garnett.Desean@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>  
**Subject:** RE: West Oakland proposed "Issue list"

Richard, Kurt, Erika, and I can do 2-3 on Wednesday.

---

**From:** Keeler, Katsumi  
**Sent:** Thursday, August 10, 2017 2:29 PM  
**To:** Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>  
**Cc:** Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>  
**Subject:** RE: West Oakland proposed "Issue list"

I'm good any of those times on Wednesday.

---

**From:** Grow, Richard  
**Sent:** Thursday, August 10, 2017 2:26 PM  
**To:** Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>  
**Cc:** Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>  
**Subject:** RE: West Oakland proposed "Issue list"

Tuesday kind of crowded, available (your time) 11-1 or 2-3, Wednesday less jammed.

---

**From:** Temple, Kurt  
**Sent:** Thursday, August 10, 2017 11:19 AM  
**To:** Grow, Richard <Grow.Richard@epa.gov>  
**Cc:** Garnett, Desean <Garnett.Desean@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: West Oakland proposed "Issue list"

Thanks Richard. Are you available 4:00 -4:30 Eastern time, 1:00-1:30 your time next Tuesday to discuss.

---

**From:** Grow, Richard  
**Sent:** Thursday, August 10, 2017 2:09 PM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>  
**Cc:** Garnett, Desean <Garnett.Desean@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** West Oakland proposed "Issue list"

Kurt

Below is our attempt to provide an initial and very preliminary list of "issues" to be addressed in a resolution agreement. Please allow for the fact that I have no feel for how these would be expressed a formal document. As a further huge caveat, whatever list we use as a starting point needs to take into account discussions, which have not yet been held, with the complainants and our state/local agency technical consultants (California EPA, California Air Resources Board, Bay Area Air Quality Management District, Alameda County Public Health). That said, the following is our current thinking on a formulation of a list of issues. The introductory sentence is an attempt at paraphrasing the two issues laid out in the acceptance letter.

#### Issues

With regard to new development and expanded activities at, around or serving the Port of Oakland and the former Oakland Army Base, including the October 2014 approval of the Northeast gateway project, attention will be given to the *methods and criteria* by which:

1. Air quality (and other freight related) impacts are
  - assessed
  - mitigated; how are measures considered, adopted, implemented
    - how is "availability" of mitigation approaches determined with regard to
      - o health impacts
      - o best available mitigation approaches
  - For both the assessment and consideration of mitigation measures,
2. Truck-related impacts, throughout the redevelopment phases (pre-construction, construction, operation) are
  - assessed
  - mitigated
    - for both of these (assessment and mitigation) generators and attractors of truck and other freight related trips are considered
3. Community engagement is implemented in ways which
  - are timely and inclusive
  - are responsive to concerns and suggestions raised
  - decisionmaking is documented and transparent
  - the scope of proposals provided for public review allow the public the opportunity to meaningfully affect the outcome of the decisionmaking process. ("piecemeal" issue).

Discussion welcome.

Richard  
Office: (415) 947-4104

**Personal Matters / Ex. 6**

---

**From:** Grow, Richard  
**Sent:** Wednesday, August 09, 2017 9:18 AM  
**To:** Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>  
**Cc:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>  
**Subject:** RE: West Oakland "backtrack" and other background

Kurt

Sounds good. Pretty swamped today, but if you can give Desean and me until tomorrow we should be able to get something off to you. Seemed to me like Ryan already had a pretty good handle on the most general issues in our last couple calls, i.e. (1) a.q. impacts, (2) truck management plan and (3) community engagement. Regarding how much more specifically do we want to break these down, I'd see two tactical considerations, one being how specific do we want to get in our September draft to the City/Port, the other being how to organize our own look into these issues.

As the so-called "technical lead" I have some inclination to try to organize the technical issues in a way that can make effective use of the technical expertise we hope to obtain from our partner state and local environmental and health agencies.

Richard

---

**From:** Temple, Kurt  
**Sent:** Wednesday, August 09, 2017 6:32 AM  
**To:** Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>  
**Cc:** Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>  
**Subject:** FW: West Oakland "backtrack" and other background

Hello Richard and Desean: Following up on Lilian's email below. We would like to touch base on the issue areas for the framework of an Informal Resolution Agreement. Would it be best for you to pull together some issue areas for us in writing to look at, shoot them forward in an email, and then we can discuss? What would work best?

Kurt

---

**From:** Dorka, Lilian  
**Sent:** Monday, August 07, 2017 5:29 PM  
**To:** Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; [ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)  
**Cc:** Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Reyes, Deldi <[Reyes.Deldi@epa.gov](mailto:Reyes.Deldi@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>  
**Subject:** RE: West Oakland "backtrack" and other background

Thanks Richard. Agree that we will need to look carefully at what we include in the agreement as "accomplishments." Once we get to the point where we will need to filling the details of the agreement we will need to rely heavily on the Region for that background and perspective moving forward.

For right now though, we will be putting together just the framework of an Informal Resolution Agreement with placeholders for "issue areas" that will need to be addressed. We owe the city and port a draft framework as early as

possible in September. Kurt will contact you and Desean tomorrow to discuss this and to get your assistance on what – from your Region9/EPA perspective, those “issue areas” for placeholder should be. (Ryan will be proving this same info from DOT perspective.)

By the way, I need to send to Ryan a list of those on the call today from EPA. Can you let me know what your and Desean’s titles are so that I can add it to the list along with your email address? Thanks! Lily

---

**From:** Grow, Richard

**Sent:** Monday, August 7, 2017 5:09 PM

**To:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; [ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)

**Cc:** Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Reyes, Deldi <[Reyes.Deldi@epa.gov](mailto:Reyes.Deldi@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>

**Subject:** West Oakland "backtrack" and other background

All

I wanted to (1) follow up on the allegation of the West Oakland community's "backtrack" on a previous 2012 agreement and (2) suggest a background briefing/discussion in the near future on the multiple tracks on which we and other agencies, the community and other stakeholders have been pursuing resolution of these issues over the past many years.

Re the "backtrack": the reference here is to the City having resolved one of two somewhat informal negotiation tracks accompanying the 2012 EIR approval. Leading up to the approval City Council set up two working groups, one on "labor" issues, the other on "environmental", each headed up by a City Council person. WOEIP participated in both, I sat in on the environmental group, chaired by Councilperson Nancy Nadel. As the EIR approval date came nigh, there was agreement on the labor track, but not on the environmental track. WOEIP signed off on the labor agreement, but there was no environmental agreement as City staff did not agree with the recommendations of the WG. I have read the labor agreement signed by WOEIP several times and been unable to see it (as a non-attorney) as showing the WOEIP sign off on anything other than that agreement. It is that agreement, seen by the community as the "labor" agreement, that the City attorney referred to as a "community benefits agreement." Regardless of how various attorneys may read that agreement, WOEIP is adamant that they did not, and had no intention to, signify agreement to an environmental package. Having sat in on the environmental workgroup, I can verify that no agreement was reached on that front. For those more familiar to grassroots community struggles, the age old tension between the labor and environmental movements was full on full display.

Re a background briefing. Our office's continuous involvement in the community at the grassroots level goes back at least to 2001, arguably to 1997, and most recently we find ourselves at a table being convened by a City Councilperson and the Bay Area District with the City and Port to once again consider a suite of recommendations for zero and near zero emissions approaches. There are at least four, and likely more, "strands" of engagement currently or recently in play. My suggestion is that we (R9) provide a briefing and discussion for a those interested. Without a "scorecard" it may be difficult for EPA and DOT staff involved in this to be able to craft a resolution that doesn't inadvertantly memorialize already failed processes.

Richard

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDD3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/25/2017 2:13:21 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Re: Oakland

Here's what I'm thinking:

1. Use your Albuquerque settlement agreement as a template to create a settlement agreement for Oakland. For now, we just need one. We have to decide later if we need two. So can you just use Word to take your Albuquerque and replace all the Albuquerque and Bernalillos with Port of Oakland and City of Oakland? (Debra) This way, at any time, we can say we have a draft agreement, and we will also have a framework for the agreement. We also need to figure out if we are going to have one agreement or two.
2. From your notes of our conversation with the Complainants, let's create a list of the Complainant's wants. Can you do this? (Debra) I will review the complaint and try to figure out what they want from the complaint. (Katsumi) We can then put these two together and come up with the Complainant's issues list which incorporates what they expressed in the official complaint and the interview.
3. We already have R9's issues list, but Richard's thoughts and words need to be interpreted, so let me try to do that. (Katsumi)
4. We are still waiting for DOT's issues list, rights?
5. And we can talk later about ECRCO's issues list after I've researched a little more on what has been done by BAAQMD and CARB. (Katsumi)

What do you think? Then we just wait for DOT's issues list and incorporate that. I think we can get this done in a few of days.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 9:54:15 AM  
**To:** Keeler, Katsumi  
**Subject:** Oakland

Are you working today?

I don't have a plan to lay out to you at this time. I am trying to read through the documents, set up the case file, etc. We are going to try to settle. Lillian wants bullets defining the issues that will be addressed via settlement.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** -- Martin Luther King, Jr. , 18th April, 1959

---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 9:51 AM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** Re:

What are you thinking on how we should proceed on the Oakland case? I don't know of any communications you've had with Ericka.

---

**From:** McGhee, Debra  
**Sent:** Friday, August 25, 2017 8:47:34 AM  
**To:** Keeler, Katsumi  
**Subject:** RE:

Absolutely!

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ ~ *Martin Luther King, Jr. , 18th April, 1959*

---

**From:** Keeler, Katsumi  
**Sent:** Friday, August 25, 2017 8:40 AM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:**

Are you working today?

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 11/16/2017 2:50:32 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Emailing - 2017-11-9 Port Board Agenda Report Item 5.1.pdf  
**Attachments:** 2017-11-9 Port Board Agenda Report Item 5.1.pdf



2017-11-9 Port  
Board Agenda R...

For your records.

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 11/16/2017 2:47:23 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Katsumi working from home today  
**Attachments:** 2017-11-03 Comment Letter from BAAQMD for Port Board Meeting 11917 item 5.1.msg

Have you seen this?



2017-11-03  
Comment Letter ...

---

**From:** McGhee, Debra  
**Sent:** Thursday, November 16, 2017 9:40 AM  
**To:** Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Katsumi working from home today

Sorry you're not feeling well. Did you read the response from the City and Port? If so, what did you think?

I note that on page 15 they say that BAAQMD responded favorably to the Port's October 18 2017 emissions control strategy. But they don't include the strategy or the response. Do you think BAAWMD's response would be online? I presume the emission control strategy is online. I think it has to be as part of their public disclosure requirements.

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in." -- Martin Luther King, Jr. , 18th April, 1959**

---

**From:** Keeler, Katsumi  
**Sent:** Thursday, November 16, 2017 8:20 AM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>  
**Subject:** Katsumi working from home today

All, I'm online and working from home today. I will be on the call for the Port also.

---

<< OLE Object: Picture (Device Independent Bitmap) >>

Katsumi Keeler

004381 2020-10-29

Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Message

---

**From:** Dorka, Lilian [Dorka.Lilian@epa.gov]  
**Sent:** 11/13/2017 8:15:11 PM  
**To:** Temple, Kurt [Temple.Kurt@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]  
**Subject:** FW: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1  
**Attachments:** DRAFT Port-OAB Action List Nov 3.pdf; BAAQMD ltr to POAK Board Item 5.1.pdf

-----Original Message-----

From: ryan.fitzpatrick@dot.gov [mailto:ryan.fitzpatrick@dot.gov]  
Sent: Monday, November 13, 2017 2:57 PM  
To: yvette.rivera@dot.gov; Dorka, Lilian <Dorka.Lilian@epa.gov>  
Subject: FW: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

This is the Bay Air district letter from November 3 referenced in the latest letter to the Port

Ryan N. Fitzpatrick, Esq.  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

-----Original Message-----

From: Grow, Richard [mailto:Grow.Richard@epa.gov]  
Sent: Monday, November 13, 2017 2:43 PM  
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>  
Subject: FW: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

---

From: Alison Kirk [AKirk@baaqmd.gov]  
Sent: Friday, November 3, 2017 11:39 AM  
To: dedgerly@portoakland.com  
Cc: David Vintze; Henry Hilken; Karen Schkolnick; afournier@baaqmd.gov; Jean Roggenkamp; dbreen@baaqmd.gov; Jack Broadbent; Grow, Richard; Marvin, Cynthia@ARB; Cappio, Claudia; Lakin, Matt; Machol, Ben  
Subject: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

Hello,

# Deliberative Process / Ex. 5

Please contact me if you have any questions.

Sincerely,

Alison Kirk, AICP  
Senior Environmental Planner  
415-749-5169

The Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 11/15/2017 9:34:55 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** FW: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9  
**Attachments:** City and Port Joint Proposed Informal Resolution Agreement.pdf; ATT00001.htm; City and Port DRAFT Informal Resolution Agreement REDLINE to EPA DOT Draft.pdf; ATT00002.htm; CLEAN Port Draft Informal Resolution Agreement.docx; ATT00003.htm

---

**From:** Dorka, Lilian  
**Sent:** Sunday, November 12, 2017 4:15 PM  
**To:** Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Yvette Rivera <yvette.rivera@dot.gov>; ryan.fitzpatrick@dot.gov  
**Subject:** Fwd: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Sent from my iPhone

Begin forwarded message:

**From:** "Michele Heffes" <mheffes@portoakland.com>  
**To:** "charles.james@dot.gov" <charles.james@dot.gov>, "Dorka, Lilian" <Dorka.Lilian@epa.gov>  
**Cc:** "Parker, Barbara" <BParker@oaklandcityattorney.org>, "Bee, Maria" <MBee@oaklandcityattorney.org>, "Cappio, Claudia (CCappio@oaklandnet.com)" <CCappio@oaklandnet.com>, "Danny Wan" <dwan@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Chris Lytle" <clytle@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Smith, Jamie" <JSmith@OaklandCityAttorney.org>, "Laurice Henry-Ross" <lhenry@portoakland.com>  
**Subject:** Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Dear Ms. Dorka and Mr. James:

Attached please find a November 10, 2017, letter (including the 2 referenced attachments) from Oakland City Attorney, Barbara J. Parker, and Port Attorney, Danny Wan, concerning the above-referenced matter. Hard copies will be sent via First Class Mail. Please let me know if you have any questions.

Michele

Michele Heffes  
Assistant Port Attorney  
Port Attorney's Office  
530 Water Street  
Oakland, CA 94607  
Phone: (510) 627-1348  
[mheffes@portoakland.com](mailto:mheffes@portoakland.com)

ATTORNEY-CLIENT PRIVILEGED

---

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Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 11/15/2017 5:35:56 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** KSM Briefing Document 10-25-2017.docx  
**Attachments:** KSM Briefing Document 10-25-2017.docx



KSM Briefing  
Document 10-25-...

Please see in red an update on the KSM doc for Port of Oakland. I will also be sending you an additional update for MDEQ after we have the convo with Marianne today at 4:00 p.m.

Message

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/8/2017 2:31:21 PM  
**To:** pcort@earthjustice.org  
**Subject:** FW: Request for Teleconference for Oakland Army Base Complaint  
**Attachments:** ATT76351

Mr. Cort, DOT representatives will also attend this meeting and 11:00 a.m. (PDT) on Thursday, August 10, appears to be the best time all around. Will this be good for you? Please let me know. Thanks.

---

**From:** Keeler, Katsumi  
**Sent:** Tuesday, August 08, 2017 10:07 AM  
**To:** pcort@earthjustice.org  
**Subject:** Request for Teleconference for Oakland Army Base Complaint

Hello, Mr. Cort, this is Katsumi Keeler from the U.S. EPA's External Civil Rights Compliance Office. I'm writing in regard to the complaint we received from Earthjustice against the City of Oakland and the Port of Oakland (EPA File Nos. 13R-17-R9 and 14R-17-R9). We would like to set up an initial teleconference with Earthjustice to discuss this complaint.

Please let me know if you would be available for a one-hour teleconference at one of the following times:

Wednesday, August 9, 8:00 a.m. (PDT)  
Wednesday, August 9, 9:00 a.m. (PDT)  
Thursday, August 10, 11:00 a.m. (PDT)  
Thursday, August 10, 1:30 p.m. (PDT)

If you have any questions, please simply respond to this email message or call me at 202-564-2347. Thank you.

Katsumi Keeler



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: [keeler.katsumi@epa.gov](mailto:keeler.katsumi@epa.gov)

1200 Pennsylvania Avenue, N.W.

Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/8/2017 2:07:03 PM  
**To:** pcort@earthjustice.org  
**Subject:** Request for Teleconference for Oakland Army Base Complaint  
**Attachments:** ATT11041

Hello, Mr. Cort, this is Katsumi Keeler from the U.S. EPA's External Civil Rights Compliance Office. I'm writing in regard to the complaint we received from Earthjustice against the City of Oakland and the Port of Oakland (EPA File Nos. 13R-17-R9 and 14R-17-R9). We would like to set up an initial teleconference with Earthjustice to discuss this complaint.

Please let me know if you would be available for a one-hour teleconference at one of the following times:

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Wednesday, August 9, 9:00 a.m. (PDT)  
Thursday, August 10, 11:00 a.m. (PDT)  
Thursday, August 10, 1:30 p.m. (PDT)

If you have any questions, please simply respond to this email message or call me at 202-564-2347. Thank you.

Katsumi Keeler



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: keeler.katsumi@epa.gov

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/8/2017 1:33:30 PM  
**To:** Rhines, Dale [rhines.dale@epa.gov]  
**Subject:** Oakland Case Records  
**Attachments:** WOEIP Title VI Complaint Final Format.pdf; 2017.04.07 Garcia, Cort, Adeyeye re Acknowledgement of Admin Correspondence 13R-17-R9.pdf; 2017.04.07 Schaaf, L. (Recipient) Acknowledgement of Admin Correspondence 13R-17-R9.pdf; 2017-07-19 Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017.pdf; ATT68748



WOEIP Title VI  
Complaint Final ...



2017.04.07 Garcia,  
Cort, Adeyeye re ...



2017.04.07  
Schaaf, L. (Recip...



2017-07-19 Final  
Letter of Accepta...



Katsumi Keeler  
Case Manager  
Office of General Counsel  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency

Phone: 202-564-2347  
Email: keeler.katsumi@epa.gov

1200 Pennsylvania Avenue, N.W.  
Clinton Federal Building North  
Room 2524, Mailcode 2310A  
Washington, D.C. 20460

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Message

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**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/2/2017 1:28:44 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** 2017-0213 Investigative Plan DRAFT 08.01.2017 .docx  
**Attachments:** 2017-0213 Investigative Plan DRAFT 08.01.2017 .docx



2017-0213  
Investigative Pla...

## Appointment

---

**From:** Keeler, Katsumi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=490BDDDB3993F4AC78A1E8185C44DB5C4-KEELER, KAT]  
**Sent:** 8/2/2017 12:45:23 PM  
**To:** Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]  
**Subject:** Accepted: City and Port of Oakland complaint discussion  
**Location:** Teleconference  
**Start:** 8/7/2017 7:30:00 PM  
**End:** 8/7/2017 8:30:00 PM  
**Show Time As:** Busy

Task

---

**Subject:** Port of Oakland resolution agreement issue areas  
**Start Date:** 8/17/2017  
**Due Date:** 8/17/2017

**Status:** Completed  
**Percent** 1  
**Complete:**

**Total Work:** 0  
**Actual Work:** 0

**Owner:** Keeler, Katsumi

## Appointment

---

**From:** McGhee, Debra [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MCGHEE, DEBRA]  
**Sent:** 9/19/2017 6:03:02 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]; Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]; Grow, Richard [Grow.Richard@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]; Johnson, Johanna [Johnson.Johanna@epa.gov]; O'Lone, Mary [olone.mary@epa.gov]; Rivera, Yvette (OST) [yvette.rivera@dot.gov]; Jang, Deeana (OST) [deeana.jang@dot.gov]; Caro-Lopez, Howard (OST) [howard.caro-lopez@dot.gov]; Huezo, Hector (OST) [hector.o.huezo@dot.gov]; Cockfield, Erva (OST) [erva.cockfield@dot.gov]; Hart, Daryl (MARAD) [daryl.hart@dot.gov]; Kizito-Ramos, Rachel (MARAD) [Rachel.Kizito-Ramos@dot.gov]; grow.r@att.net  
**CC:** Strauss, Alexis [Strauss.Alexis@epa.gov]; Israels, Ken [Israels.Ken@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]  
**BCC:** DCRoomARN2528/DC-ARN-OCR-Rooms [DCRoomARN2528@epa.gov]  
**Subject:** Preparation for September 26 Meeting with Oakland Port and City  
**Location:** Conference Call//ECRCO Conference Room  
**Start:** 9/22/2017 6:00:00 PM  
**End:** 9/22/2017 7:00:00 PM  
**Show Time As:** Busy

Call to plan for Meeting with Recipients. A draft Agenda will be circulated prior to the meeting.

**Conference Line/Code / Ex. 6**

## Appointment

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 9/13/2017 11:49:19 AM  
**To:** O'Lone, Mary [OLone.Mary@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]

**Subject:** Call with Michelle Hefferes Port of Oakland

**Location:** call in number **Conference Line/Code / Ex. 6**

**Start:** 9/13/2017 5:00:00 PM

**End:** 9/13/2017 5:30:00 PM

**Show Time As:** Tentative

## Appointment

---

**From:** McGhee, Debra [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MCGHEE, DEBRA]  
**Sent:** 9/6/2017 3:36:37 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]; Grow, Richard [Grow.Richard@epa.gov]; Garnett, Desean [Garnett.Desean@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Katsumi Keeler (Keeler.Katsumi@epa.gov) [Keeler.Katsumi@epa.gov]  
**CC:** O'Lone, Mary [olone.mary@epa.gov]  
**BCC:** DCRoomARN2528/DC-ARN-OCR-Rooms [DCRoomARN2528@epa.gov]  
**Subject:** R-9 Suggested Revisions  
**Location:** Conference Call/Rm 2528  
**Start:** 9/6/2017 7:30:00 PM  
**End:** 9/6/2017 8:30:00 PM  
**Show Time As:** Busy

Call to discuss the revisions and suggested strategy provided by R-9 vis-à-vis the complaint filed against the City and Port of Oakland.

Call-in Information:

**Conference Line/Code / Ex. 6**

## Appointment

---

**From:** Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]  
**Sent:** 8/31/2017 4:23:07 PM  
**To:** Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]; Rivera, Yvette (OST) [yvette.rivera@dot.gov]; Jang, Deeana (OST) [deeana.jang@dot.gov]; Caro-Lopez, Howard (OST) [howard.caro-lopez@dot.gov]; Carlson, Terence (OST) [Terence.Carlson@dot.gov]; Huezo, Hector (OST) [hector.o.huezo@dot.gov]; Kizito-Ramos, Rachel (MARAD) [Rachel.Kizito-Ramos@dot.gov]; Hart, Daryl (MARAD) [daryl.hart@dot.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]; Grow, Richard [Grow.Richard@epa.gov]; Strauss, Alexis [Strauss.Alexis@epa.gov]  
**Subject:** Oakland updates and check-in  
**Location:** Teleconference  
**Start:** 9/7/2017 7:00:00 PM  
**End:** 9/7/2017 8:00:00 PM  
**Show Time As:** Busy  
**Recurrence:** (none)

**\*\*I changed the date to Thursday, September 7. That Tuesday was proving difficult for several parties.\*\***

Hey team:

With the September 26 date set for the City and the Port's visit to DC, I think we should have a teleconference to discuss what we need to do to prepare that meeting and get us all working on the same page. We can discuss our roles in preparing any material, such as draft outlines for agreements, that we'll need for the meeting, to ensure that we are prepared and can make the most of this opportunity.

I'd like to do this as early in September as possible, and suggested this time and date. If this won't work, we can move it, but I think its important for us to do it soon so we have time to prepare. September is going to be busy. If I left anyone off the invite, please forward this to them.

Thanks,

Ryan

**Conference Line/Code / Ex. 6**

Message

---

**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 11/16/2017 3:20:04 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Fw: Meeting re City an Port response and draft Framework Markup

Debra: Can you initiate this call from the conference room? I am working at home today. Kurt

---

**From:** Temple, Kurt  
**Sent:** Thursday, November 16, 2017 10:12 AM  
**To:** Dorka, Lilian; Rhines, Dale; McGhee, Debra; Keeler, Katsumi; Rhodes, Julia; O'Lone, Mary; Garnett, Desean; Grow, Richard; Strauss, Alexis  
**Cc:** Harrison, Brenda  
**Subject:** Re: Meeting re City an Port response and draft Framework Markup

The number and code for today's call re Oakland

**Conference Line/Code / Ex. 6**

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**From:** Temple, Kurt  
**Sent:** Monday, November 13, 2017 1:23 PM  
**To:** Temple, Kurt; Dorka, Lilian; Rhines, Dale; McGhee, Debra; Keeler, Katsumi; Rhodes, Julia; O'Lone, Mary; Garnett, Desean; Grow, Richard; Strauss, Alexis  
**Cc:** Harrison, Brenda  
**Subject:** Meeting re City an Port response and draft Framework Markup  
**When:** Thursday, November 16, 2017 11:30 AM-12:30 PM.  
**Where:** Room 2528

**Conference Line/Code / Ex. 6**

Message

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**From:** Veney, Carla [Veney.Carla@epa.gov]  
**Sent:** 9/21/2017 6:46:42 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Logistics for Meeting with the EPA and DOT

I have never paid attention to the arch. I normally tell folks who are coming via metro that our entrance is to the right of you after coming up the second set of escalators.

---

**From:** McGhee, Debra  
**Sent:** Thursday, September 21, 2017 2:44 PM  
**To:** Veney, Carla <Veney.Carla@epa.gov>  
**Subject:** RE: Logistics for Meeting with the EPA and DOT

The North side entrance is the one right there, under the arch when you come out of the Federal Triangle Metro, right?

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Veney, Carla  
**Sent:** Thursday, September 21, 2017 2:43 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** RE: Logistics for Meeting with the EPA and DOT

Ok, thank you

---

**From:** McGhee, Debra  
**Sent:** Thursday, September 21, 2017 2:42 PM  
**To:** Veney, Carla <Veney.Carla@epa.gov>  
**Subject:** FW: Logistics for Meeting with the EPA and DOT

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Bee, Maria [mailto:MBee@oaklandcityattorney.org]  
**Sent:** Thursday, September 21, 2017 2:31 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>

**Cc:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>

**Subject:** RE: Logistics for Meeting with the EPA and DOT

Hi Debra,

The City of Oakland contingent is:

Barbara Parker	City Attorney
Maria Bee	Special Counsel
Claudia Cappio	Assistant City Administrator

I have the address for the EPA, but is there a suite number? Please let me know if you need additional information.

Thanks,  
Maria

---

**From:** McGhee, Debra [<mailto:mcghee.debra@epa.gov>]

**Sent:** Thursday, September 21, 2017 11:25 AM

**To:** Bee, Maria

**Cc:** Dorka, Lilian; Rhines, Dale

**Subject:** Logistics for Meeting with the EPA and DOT

Dear Maria:

We here at the EPA look forward to the opportunity to meet with you and your colleagues in person. Since security is always fairly tight in federal buildings, could you please provide me with a list of the individuals who will be attending the September 26, 2017 meeting? This will allow us to coordinate your arrival with security and so speed your entrance to the building. If you could provide both the name and the title of each participant, it would be most helpful.

Thanks for your attention to this matter.

Sincerely,

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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This is a confidential attorney-client communication. This email contains confidential attorney-client privileged information and is for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and any attachments. [v1.3]

Message

---

**From:** Veney, Carla [Veney.Carla@epa.gov]  
**Sent:** 9/21/2017 6:43:19 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Logistics for Meeting with the EPA and DOT

Ok, thank you

---

**From:** McGhee, Debra  
**Sent:** Thursday, September 21, 2017 2:42 PM  
**To:** Veney, Carla <Veney.Carla@epa.gov>  
**Subject:** FW: Logistics for Meeting with the EPA and DOT

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

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---

**From:** Bee, Maria [<mailto:MBee@oaklandcityattorney.org>]  
**Sent:** Thursday, September 21, 2017 2:31 PM  
**To:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Cc:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>  
**Subject:** RE: Logistics for Meeting with the EPA and DOT

Hi Debra,  
The City of Oakland contingent is:

Barbara Parker	City Attorney
Maria Bee	Special Counsel
Claudia Cappio	Assistant City Administrator

I have the address for the EPA, but is there a suite number? Please let me know if you need additional information.

Thanks,  
Maria

---

**From:** McGhee, Debra [<mailto:mcghee.debra@epa.gov>]  
**Sent:** Thursday, September 21, 2017 11:25 AM  
**To:** Bee, Maria  
**Cc:** Dorka, Lilian; Rhines, Dale  
**Subject:** Logistics for Meeting with the EPA and DOT

Dear Maria:

We here at the EPA look forward to the opportunity to meet with you and your colleagues in person. Since security is always fairly tight in federal buildings, could you please provide me with a list of the individuals who will be

004402 2020-10-29

attending the September 26, 2017 meeting? This will allow us to coordinate your arrival with security and so speed your entrance to the building. If you could provide both the name and the title of each participant, it would be most helpful.

Thanks for your attention to this matter.

Sincerely,

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

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This is a confidential attorney-client communication. This email contains confidential attorney-client privileged information and is for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and any attachments. [v1.3]

Message

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 9/6/2017 8:04:43 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** FW: Meeting Week of 8/28/17?

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Grow, Richard  
**Sent:** Wednesday, August 16, 2017 6:02 PM  
**To:** Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>  
**Cc:** Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>  
**Subject:** RE: Meeting Week of 8/28/17?

Whatever it is called, the core requirements for any path forward seems likely to include (1) a decisionmaking process by the City and Port in which there is adequate public involvement and systematic consideration of mitigation measures (e.g. best practices and technologies already in use at other CA ports and logistics facilities etc.), (2) criteria for acceptance, rejection, further study, etc. of those measures and (3) actual implementation and enforcement of the agreed upon measures. Inherently this would result in a lag between the commitment to the process and determination of whether an adequate result (e.g. adoption of best available technologies) has come about. I would be most anxious to tie down 1 & 2 and set some clear milestones for 3.

Richard

---

**From:** Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]  
**Sent:** Wednesday, August 16, 2017 12:16 PM  
**To:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>  
**Cc:** Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Johnson, Johahna <[Johnson.Johahna@epa.gov](mailto:Johnson.Johahna@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>; Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** RE: Meeting Week of 8/28/17?

Our language needs more fleshing out, and we need to go over it here, but we'll have some language ready to incorporate when the framework is ready.

What I meant by "series of agreements" is that it is going to take time and a commitment to technical assistance to develop the specific and substantive details of a truck management plan that can actually be expected to have effect on reducing truck traffic, and I imagine it will take just as much time and commitment for air quality emissions. So in my

head, I was thinking we'd have an agreement where all the Parties agree to pursue those particular elements, with federal technical assistance and ultimate approval, and that those sub-agreements (such as the approved Truck Management Plan, approved Public Engagement Plan, and approved Air Emissions Reduction Plan) would become binding upon their approval as part of the resolution of this complaint. This kind of strategy would allow us to bind the City and Port to working with us on these items as part of the resolution, and give us the time necessary to do them right. I don't want to see us come to an agreement where the Port and City agree to create a certain set of plans that then don't themselves become binding to implement properly, so that just the agreement to create these plans becomes the resolution and the end of the complaint investigation process.

Just a thought, we can discuss strategy for this once we get going with a framework.

Ryan

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]  
**Sent:** Wednesday, August 16, 2017 1:43 PM  
**To:** Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>  
**Cc:** Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Johnson, Johahna <[Johnson.Johahna@epa.gov](mailto:Johnson.Johahna@epa.gov)>; Farrell, Ericka <[Farrell.Ericka@epa.gov](mailto:Farrell.Ericka@epa.gov)>; Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** RE: Meeting Week of 8/28/17?

Hi Ryan – yes we are putting together a framework and have already started – with help from Region 9 , identifying the “issue area” place holders that we need to have in the agreement and they are along the lines of what you have below plus the procedural safeguards that we will want each recipient to focus on -- i.e., developing a nondiscrimination program.

We can talk further Ryan but I am not sure I am really understanding the “series of Agreements.” In my experience you want one agreement that you can point to and monitor even if it has subsections with specific monitoring timeframes, etc.

I am hoping we can share the framework of an agreement with you by next week so that you guys can take a look and also add anything from a DOT perspective that we may have overlooked. Remember that what we promised to share with the City and Port early September is a framework of an agreement for them to discuss with their client (and that can be what we discuss with them when they come to DC to meet). They are not expecting to get the fully fleshed out detailed agreement.

If you have already developed language on the public engagement and truck traffic, we can go ahead and incorporate that into the draft Resolution Agreement Framework now. That way what we share with you next week will include your portion. Please reach out to Kurt if you want to discuss what might work best.

Re the meeting here in DC, I'm still wondering if week of 8/28 works? I would rather meet with both recipients at once if at all possible.

Thanks again!

---

**From:** Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]  
**Sent:** Wednesday, August 16, 2017 8:53 AM  
**To:** Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>  
**Cc:** Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>  
**Subject:** RE: Meeting Week of 8/28/17?

I reached out to them. Its early there. I'll get on the phone with Michele later and see if you can hammer this out.

Lily, you had mentioned before that you wanted your team to take a stab at a framework for an agreement, using some of the language from settlements you had crafted in the past. Are you all working on that? I've been working on some of the substantive language we'll need for the public engagement portion and for the truck management portion.

We can talk about this in more detail later, but I think a good approach here may be to have a series of agreements. The overarching agreement can commit the City and Port to working with us and seeking our approval on the final products for three main goals: air emissions reduction, truck management, and public engagement. Compliance with that overarching agreement will require the City and Port to create final products designed to reduce air emissions and trucks, and to create a robust and meaningful public engagement process around it, with our approval. Those final products can then be signed sub-agreements to the overarching agreement, and incorporated into it.

That's my thinking on this, and how it could work and we could get the resolution process going swiftly and meaningfully.

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** Rivera, Yvette (OST)  
**Sent:** Wednesday, August 16, 2017 8:37 AM  
**To:** Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>; Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>  
**Cc:** Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>  
**Subject:** RE: Meeting Week of 8/28/17?

Let's try that. Thank you for coordinating.

---

**From:** Fitzpatrick, Ryan (OST)  
**Sent:** Wednesday, August 16, 2017 8:36 AM  
**To:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>  
**Cc:** Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>  
**Subject:** RE: Meeting Week of 8/28/17?

It doesn't look like we have much of a choice. I can tell Michele at the Port that if they can't come next Wednesday the 23<sup>rd</sup>, then it will have to wait until after Labor Day. Maybe they'll choose to eschew the City and come the 23<sup>rd</sup>, or maybe the City will change its schedule.

That said, given that we don't have a proposed pre-resolution framework put together yet, if we do it after Labor Day, we may be able to finish it and present it to them then and use it as a topic for discussion, which they can then present to their boards.

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]  
**Sent:** Tuesday, August 15, 2017 10:11 PM  
**To:** Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>  
**Cc:** Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>  
**Subject:** Re: Meeting Week of 8/28/17?

Hi folks I am out Friday the 8th. May need to leave a little early on the 7th. Please keep in mind we will need to allow for region 9 participation by phone so will need to meet after 12 pm.

Finally, I am wondering if week of 9/4 is too late for recipients given they need to prepare for board meeting which is 2 weeks later? Thanks so much for coordinating!

Sent from my iPhone

On Aug 15, 2017, at 4:52 PM, Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)> wrote:

I can see what their schedule looks like the week after. Its Labor Day that Monday, September 4, but maybe after.

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
(202) 366-1583

---

**From:** Fitzpatrick, Ryan (OST)  
**Sent:** Tuesday, August 15, 2017 3:57 PM  
**To:** 'Rhines, Dale'; Rivera, Yvette (OST); Dorka, Lilian  
**Subject:** RE: Meeting Week of 8/28/17?

Yes. But we'll need to push this back

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
(202) 366-1583

---

**From:** Rhines, Dale [<mailto:rhines.dale@epa.gov>]  
**Sent:** Tuesday, August 15, 2017 3:56 PM  
**To:** Rivera, Yvette (OST); Fitzpatrick, Ryan (OST); Dorka, Lilian  
**Subject:** RE: Meeting Week of 8/28/17?

Just to clarify, we are talking about August 31 or September 1 at this pont,correct?

---

**From:** Rivera, Yvette (OST) [<mailto:yvette.rivera@dot.gov>]  
**Sent:** Tuesday, August 15, 2017 3:51 PM  
**To:** Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>; Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>  
**Subject:** RE: Meeting Week of 8/28/17?

Next Thursday or Friday does not work. I will be out on training.  
<image001.png>

---

**From:** Fitzpatrick, Ryan (OST)  
**Sent:** Tuesday, August 15, 2017 3:40 PM  
**To:** Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Dorka, Lilian (<[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)> <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>  
**Subject:** FW: Meeting Week of 8/28/17?

This is going to be a big meeting. Can you let me know your availabilities for this week?

For our team, only Thursday (and potentially Friday) will work. We are all participating in a DOJ training Monday through Wednesday that week, as a team.

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
(202) 366-1583

---

**From:** Michele Heffes [<mailto:mheffes@portoakland.com>]  
**Sent:** Tuesday, August 15, 2017 3:35 PM  
**To:** Fitzpatrick, Ryan (OST)  
**Cc:** Michele Heffes  
**Subject:** Meeting Week of 8/28/17?

Ryan: Thanks. I just left you a voice mail message. Good news. The City of Oakland team can actually be available for the meeting as well, but we were hoping to schedule it for the week of 8/28/17 instead of 8/23/17. Sorry for the multiple scheduling emails, but can you let me know what days the week of 8/28/17 work for you, Lilian Dorka, and Charles James? Thanks very much. Michele

Michele Heffes  
Assistant Port Attorney  
Port Attorney's Office  
530 Water Street  
Oakland, CA 94607  
Phone: (510) 627-1348  
[mheffes@portoakland.com](mailto:mheffes@portoakland.com)

*ATTORNEY-CLIENT PRIVILEGED*

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**From:** Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]  
**Sent:** Tuesday, August 15, 2017 9:36 AM  
**To:** Michele Heffes <[mheffes@portoakland.com](mailto:mheffes@portoakland.com)>  
**Subject:** RE: Next Wednesday

We're still working on where to meet. It'll either be here or at EPA HQ. They are pretty close to each other.

DOT is located at:

1200 New Jersey Avenue SE  
Washington, DC 20590

EPA is located at:

1200 Pennsylvania Avenue  
Washington, DC 20460

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** Michele Heffes [<mailto:mheffes@portoakland.com>]  
**Sent:** Tuesday, August 15, 2017 11:55 AM  
**To:** Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>  
**Subject:** Re: Next Wednesday

Hi Ryan-thanks. I'll get back to you shortly about a proposed time. Will we be meeting in your office? Can you please send me the address? We look forward to seeing you soon. Thanks. Michele

Michele Heffes  
Assistant Port Attorney  
(510) 627-1348

On Aug 15, 2017, at 6:28 AM, Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)> wrote:

Hey Michele:

Next Wednesday, August 23, will work well. Just working on the times that will work for everyone and we'll get it set up.

Ryan

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary

U.S. Department of Transportation  
W78-312  
(202) 366-1979

Message

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**From:** Strauss, Alexis [Strauss.Alexis@epa.gov]  
**Sent:** 8/25/2017 6:28:27 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Oakland Case Team

Welcome - we hope you'll pay us a visit before long as we work on this matter together,  
Best wishes,  
Alexis

Alexis Strauss  
Acting Regional Administrator  
E.P.A. Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3572

-----Original Message-----

From: McGhee, Debra  
Sent: Friday, August 25, 2017 9:22 AM  
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Carlson, Terence (OST) <Terence.Carlson@dot.gov>; Hart, Daryl (MARAD) <daryl.hart@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>  
Subject: Oakland Case Team

Dear Colleagues at EPA and DOT--

I wanted to let you know that I will be taking over Ericka Farrell's role in processing the complaints filed against the City of Oakland and the Port of Oakland. This change is necessary because Ericka has accepted a professional development detail to another Office within the EPA. It sounds exciting, but I'll let Ericka provide more information on where she is going and what she'll be working on rather than trying to speak for her.

I have been included on most e-mails regarding this case, I think, but I still wanted to introduce myself and invite you to call me if it ever seems like a necessary or at least helpful next step. I am reading through the responses from the city and the port and I will be studying DOT's Investigative Plan as well. I received and reviewed the Region's summation of issues they judge appropriate for inclusion in any Resolution Agreement we draft.

A brief word about my background -- I spent a couple decades at HUD working on Fair Housing issues in headquarters and in the field and joined the EPA ECRCO in January of this year. I'm looking forward to digging into this case.

Sincerely,

Debra E. McGhee  
Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in." -- Martin Luther King, Jr., 18th April, 1959

Message

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**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 9/6/2017 3:25:10 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Regional comments on the Draft Resolution

Debra: If we could work within the 3-4 pm Eastern window, that would be good. Kurt

---

**From:** Grow, Richard  
**Sent:** Wednesday, September 06, 2017 11:21 AM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Cc:** Temple, Kurt <Temple.Kurt@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** RE: Regional comments on the Draft Resolution

It would be just Desean and myself from R9. I'm good (with a bit of notice) anytime before 2 your time, 3-4 your time and 4:30 – 6:30 your time. Not sure what's on Desean's calendar.

---

**From:** McGhee, Debra  
**Sent:** Wednesday, September 06, 2017 8:13 AM  
**To:** Grow, Richard <Grow.Richard@epa.gov>  
**Cc:** Temple, Kurt <Temple.Kurt@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Subject:** Regional comments on the Draft Resolution

Hello, all. Kurt and I have been reading through and discussing your suggestions vis-à-vis the draft resolution agreement for the Port and City of Oakland. We'd like to have an informal conversation with later today, if possible, as we have a few follow up questions.

Would there be a time today that you might be available for such a discussion? Probably 30 to 45 minutes are needed. We'd be very appreciative. Thank you.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ Martin Luther King, Jr. , 18th April, 1959

## Appointment

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**From:** Kizito-Ramos, Rachel (MARAD) [Rachel.Kizito-Ramos@dot.gov]  
**Sent:** 9/22/2017 4:39:05 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
  
**Subject:** Accepted: Preparation for September 26 Meeting with Oakland Port and City  
**Location:** Conference Call//ECRCO Conference Room  
  
**Start:** 9/22/2017 6:00:00 PM  
**End:** 9/22/2017 7:00:00 PM  
**Show Time As:** Busy  
  
**Recurrence:** (none)

Message

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**From:** Rhines, Dale [rhines.dale@epa.gov]  
**Sent:** 8/24/2017 4:58:48 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Fwd: Title VI Complaint Resolution Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

Sent from my iPhone

Begin forwarded message:

**From:** "Dorka, Lilian" <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>  
**Date:** August 23, 2017 at 2:45:32 PM EDT  
**To:** "Minoli, Kevin" <[Minoli.Kevin@epa.gov](mailto:Minoli.Kevin@epa.gov)>  
**Cc:** "Mills, Derek" <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>, "Packard, Elise" <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>, "Temple, Kurt" <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>, "Rhines, Dale" <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>  
**Subject:** Title VI Complaint Resolution Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

Hello Kevin - FYI on this which we mentioned at last week's Reg Review. Wanted to give you a heads up that both the City and Port attorneys will be coming to DC for this meeting on the afternoon of 9/26. Have not locked in a time yet. I offered to host the meeting here at EPA so that you can attend for at least part of the time. Wanted to flag this for your calendar. Thanks! Lilian

-----Original Message-----

From: Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]  
Sent: Wednesday, August 23, 2017 2:37 PM  
To: Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Carlson, Terence (OST) <[Terence.Carlson@dot.gov](mailto:Terence.Carlson@dot.gov)>; Hart, Daryl (MARAD) <[daryl.hart@dot.gov](mailto:daryl.hart@dot.gov)>; Jang, Deeana (OST) <[deeana.jang@dot.gov](mailto:deeana.jang@dot.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Johnson, Johahna <[Johnson.Johahna@epa.gov](mailto:Johnson.Johahna@epa.gov)>; Redden, Kenneth <[Redden.Kenneth@epa.gov](mailto:Redden.Kenneth@epa.gov)>; Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>; Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>  
Subject: RE: Title VI: Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

Yes they are, we'll get an attendee list ahead of time too

Ryan N. Fitzpatrick, Esq.  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

-----Original Message-----

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

Sent: Wednesday, August 23, 2017 2:36 PM

To: Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>; Rivera, Yvette (OST) <[yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov)>; Carlson, Terence (OST) <[Terence.Carlson@dot.gov](mailto:Terence.Carlson@dot.gov)>; Hart, Daryl (MARAD) <[daryl.hart@dot.gov](mailto:daryl.hart@dot.gov)>; Jang, Deeana (OST) <[deeana.jang@dot.gov](mailto:deeana.jang@dot.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Johnson, Johahna <[Johnson.Johahna@epa.gov](mailto:Johnson.Johahna@epa.gov)>; Redden, Kenneth <[Redden.Kenneth@epa.gov](mailto:Redden.Kenneth@epa.gov)>; Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>; Grow, Richard <[Grow.Richard@epa.gov](mailto:Grow.Richard@epa.gov)>; Garnett, Desean <[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)>  
Subject: RE: Title VI: Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

Sounds great, thanks Ryan! So are the City and the Port both coming in person? I will work on locking in EPA calendars. Thanks again! Lily

Lilian Sotolongo Dorka, Esq.  
Director, External Civil Rights Compliance Office EPA, Office of General Counsel  
202-564-9649  
WJC-N Room 2450

-----Original Message-----

From: [ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov) [<mailto:ryan.fitzpatrick@dot.gov>]  
Sent: Wednesday, August 23, 2017 2:19 PM  
To: Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; [yvette.rivera@dot.gov](mailto:yvette.rivera@dot.gov); [Terence.Carlson@dot.gov](mailto:Terence.Carlson@dot.gov); [daryl.hart@dot.gov](mailto:daryl.hart@dot.gov); [deeana.jang@dot.gov](mailto:deeana.jang@dot.gov)  
Subject: FW: Title VI: Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

We're confirmed for September 26th. I know EPA wants to host it. We can start planning the details going forward, including time and agenda.

Ryan

Ryan N. Fitzpatrick, Esq.  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

-----Original Message-----

From: Bee, Maria [<mailto:MBee@oaklandcityattorney.org>]  
Sent: Wednesday, August 23, 2017 2:16 PM  
To: Michele Heffes <[mheffes@portoakland.com](mailto:mheffes@portoakland.com)>; Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>  
Cc: [atorrence@jenner.com](mailto:atorrence@jenner.com); Stacey J. Sublett <[SSublett@bdlaw.com](mailto:SSublett@bdlaw.com)>; David H. McCray <[DMcCray@bdlaw.com](mailto:DMcCray@bdlaw.com)>; Jacob P. Duginski <[JDuginski@bdlaw.com](mailto:JDuginski@bdlaw.com)>; [jauslander@bdlaw.com](mailto:jauslander@bdlaw.com)  
Subject: RE: Title VI: Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

Good morning,  
The City is available on 9/26/17 - thanks for coordinating.

004415 2020-10-29

Maria

-----Original Message-----

From: Michele Heffes [<mailto:mheffes@portoakland.com>]

Sent: Monday, August 21, 2017 12:13 PM

To: Fitzpatrick, Ryan (OST)

Cc: [atorrence@jenner.com](mailto:atorrence@jenner.com); Stacey J. Sublett; Bee, Maria; Spoerl, Peter; David H. McCray;

Jacob P. Duginski; Bernstein, Erin; James M. Auslander; Michele Heffes

Subject: RE: Title VI: Meeting Among DOT, EPA, Port of Oakland, and City of Oakland

Hi Ryan and City Team:

I thought I would start a new email chain for efficiency sake so there aren't two separate email strings. I sent two sets of emails to Ryan and the City team, respectively, proposing that the meeting in DC among DOT, EPA, the Port of Oakland, and the City of Oakland occur during the week of 9/25/17. September 26th works best for the Port team; there is a Port Board meeting on 9/28/17 so we would need to be back for that. The Port representatives who would be attending are Danny Wan (Port Attorney), Allison Torrence (Port's outside counsel at Jenner & Block), and myself.

Does 9/26/17 work for everyone? I was hoping we could lock in dates soon so that the City and Port representatives could start working on travel arrangements.

Please let me know. Thanks. Michele

Michele Heffes  
Assistant Port Attorney  
Port Attorney's Office  
530 Water Street  
Oakland, CA 94607  
Phone: (510) 627-1348  
[mheffes@portoakland.com](mailto:mheffes@portoakland.com)

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Message

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**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 9/21/2017 11:55:59 AM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** FW: DRAFT FRAMEWORK FOR INFORMAL RESOLUTION AGREEMENT - In Prep for 9/26/17 Meeting with Port of Oakland and City of Oakland

Let's try her today. I never heard back from Daniel Rossi.

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

---

**From:** Bee, Maria [mailto:MBee@oaklandcityattorney.org]  
**Sent:** Wednesday, September 20, 2017 9:45 PM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Michele Heffes <mheffes@portoakland.com>  
**Cc:** Packard, Elise <Packard.Elise@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Charles.james@dot.gov; Strauss, Alexis <Strauss.Alexis@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; atorrence@jenner.com  
**Subject:** Re: DRAFT FRAMEWORK FOR INFORMAL RESOLUTION AGREEMENT - In Prep for 9/26/17 Meeting with Port of Oakland and City of Oakland

Same for Oakland - thanks!

----- Original message-----

**From:** Dorka, Lilian  
**Date:** Wed, Sep 20, 2017 5:59 PM  
**To:** Michele Heffes;  
**Cc:** Bee, Maria; Packard, Elise; Minoli, Kevin; Temple, Kurt; Rhines, Dale; McGhee, Debra; Redden, Kenneth; O'Lone, Mary; Johnson, Johahna; Keeler, Katsumi; Fitzpatrick, Ryan (OST); Rivera, Yvette (OST); Jang, Deeana (OST); Charles.james@dot.gov; Strauss, Alexis; Grow, Richard; Garnett, Desean; atorrence@jenner.com;  
**Subject:** Re: DRAFT FRAMEWORK FOR INFORMAL RESOLUTION AGREEMENT - In Prep for 9/26/17 Meeting with Port of Oakland and City of Oakland

Thanks Michele!

Sent from my iPhone

On Sep 20, 2017, at 7:02 PM, Michele Heffes <mheffes@portoakland.com> wrote:

Lilian: Thank you for the draft document. Port representatives are currently reviewing it. We will be prepared to discuss it further with you and your colleagues at the 9/26/17 meeting. We look forward to meeting you then.

Thanks. Michele

Michele Heffes  
Assistant Port Attorney  
(510) 627-1348

On Sep 19, 2017, at 4:13 PM, Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)> wrote:

Hello Maria and Michele,

EPA and DOT look forward to our meeting next Tuesday to discuss informal resolution of the Title VI complaint filed with our Agencies (DOT #2017-0093 and EPA File Nos. 13R-17-R9; 14R-17-R9). As promised, we are sharing the attached **Draft Framework for an Informal Resolution Agreement** which we hope will assist with our discussion next Tuesday. Please don't hesitate to contact us if you have any questions at this time and, again, we look forward to seeing you soon.

Lilian

Lilian Sotolongo Dorka, Esq.  
Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel  
202-564-9649  
WJC-N Room 2450

<2017 09 19 DRAFT FRAMEWORK of Informal Resolution Agreement to Share with OAKLAND City and Port.docx>

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Message

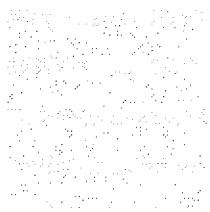
---

**From:** Bethea, Laker [bethea.laker@epa.gov]  
**Sent:** 9/22/2017 5:14:41 PM  
**To:** Stewart, JamesL [Stewart.JamesL@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; SecurityOfficers [SecurityOfficers@epa.gov]  
**CC:** Harrison, Brenda [Harrison.Brenda@epa.gov]; OARM-OA-HQ-OB [OARM-OA-HQ-OB@epa.gov]  
**Subject:** Re: Outside guests for Tuesday, September 26 at 1:00

Got it.

---

**From:** Stewart, JamesL  
**Sent:** Friday, September 22, 2017 1:12 PM  
**To:** McGhee, Debra; Veney, Carla; SecurityOfficers  
**Cc:** Harrison, Brenda; OARM-OA-HQ-OB  
**Subject:** RE: Outside guests for Tuesday, September 26 at 1:00



Maj. Brunson,

Please note the escorts for this meeting. Thanks

V/R

James L. Stewart  
Security Specialist  
Environmental Protection Agency  
OARM/Facilities Management and Services Division  
Headquarters Operations Branch  
Office: 202-564-7841  
Cell: 202-450-0284

Mailing Address:  
William Jefferson Clinton Federal Building  
1200 Pennsylvania Avenue NW MC 3204R  
Washington, DC 20460

Please send all security related emails to OARM-OA-HQ-OB. Thanks

“We must accept finite disappointment, but never lose infinite hope” Dr. Martin Luther King, Jr.

---

**From:** McGhee, Debra  
**Sent:** Friday, September 22, 2017 12:38 PM  
**To:** Stewart, JamesL <Stewart.JamesL@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>; SecurityOfficers

004419 2020-10-29

<SecurityOfficers@epa.gov>

**Cc:** Harrison, Brenda <Harrison.Brenda@epa.gov>; OARM-OA-HQ-OB <OARM-OA-HQ-OB@epa.gov>

**Subject:** RE: Outside guests for Tuesday, September 26 at 1:00

Hello, Mr. Stewart and team –

Please note that, although Carla is setting up the meeting, we'd like to have someone other than Carla called when the guests arrive. Please contact Brenda Harrison, 564-6245, or me, Debra McGhee at 564-4646.

Thank you!

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Stewart, JamesL

**Sent:** Friday, September 22, 2017 11:04 AM

**To:** Veney, Carla <Veney.Carla@epa.gov>; SecurityOfficers <SecurityOfficers@epa.gov>

**Cc:** McGhee, Debra <mcghee.debra@epa.gov>; Harrison, Brenda <Harrison.Brenda@epa.gov>; OARM-OA-HQ-OB <OARM-OA-HQ-OB@epa.gov>

**Subject:** RE: Outside guests for Tuesday, September 26 at 1:00

Maj. Brunson,

Please notify the PSO's in the north lobby that the below federal and non-federal guests will be arriving on 9/26/17 for a 1 pm meeting. All nonfederal guests must present a valid photo ID, sign in, go thru security screening and be escorted. Carla Veney will be the POC. The below federal guests must present their federal ID's and sign in without going thru x-ray and mag. They also do not need an escort. Thanks

V/R

James L. Stewart

Security Specialist

Environmental Protection Agency

OARM/Facilities Management and Services Division

Headquarters Operations Branch

Office: 202-564-7841

Cell: 202-450-0284

Mailing Address:

William Jefferson Clinton Federal Building

1200 Pennsylvania Avenue NW MC 3204R

Washington, DC 20460

Please send all security related emails to OARM-OA-HQ-OB. Thanks

"We must accept finite disappointment, but never lose infinite hope" Dr. Martin Luther King, Jr.

---

**From:** Veney, Carla

**Sent:** Friday, September 22, 2017 10:59 AM

**To:** Stewart, JamesL <[Stewart.JamesL@epa.gov](mailto:Stewart.JamesL@epa.gov)>

**Cc:** McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>; Harrison, Brenda <[Harrison.Brenda@epa.gov](mailto:Harrison.Brenda@epa.gov)>

**Subject:** Outside guests for Tuesday, September 26 at 1:00

Good Morning, our Acting General Counsel, Kevin Minoli will be hosting a meeting with outside stakeholders next week. The meeting will be held on Tuesday, September 26 from 1:00-3:00. The meeting location will be in 4045 WJC-N. Guests have been asked to arrive via the north entrance. The POC for this meeting will be Debra McGhee (564-4646) and Brenda Harrison (564-6245). So, please have security call either of them for escorts. The list of attendees are as follows:

Barbara Parker, Oakland City Attorney  
Claudia Cappio, Assistant City Administrator  
Maria Bee, Special Counsel, City Attorney's Office  
Danny Wan, Port Attorney  
Allison Torrence, Partner with Jenner & Block (Port outside counsel)  
Michele Heffes, Assistant Port Attorney

We also have Department of Transportation employees attending in person. You might not need their names but I will provide them just in case. If they can just be allowed to come up to the 4<sup>th</sup> floor without an escort, that would be helpful. The list of attendees are as follows:

Yvette Rivera  
Howard Caro-Lopez  
Ryan Fitzpatrick  
Deeana Jang

Thank you!

Carla Veney  
Executive Assistant to the General Counsel  
Office of the General Counsel  
Environmental Protection Agency  
Telephone: (202) 564-1619

Message

---

**From:** Stewart, JamesL [Stewart.JamesL@epa.gov]  
**Sent:** 9/22/2017 5:12:10 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; SecurityOfficers [SecurityOfficers@epa.gov]  
**CC:** Harrison, Brenda [Harrison.Brenda@epa.gov]; OARM-OA-HQ-OB [OARM-OA-HQ-OB@epa.gov]  
**Subject:** RE: Outside guests for Tuesday, September 26 at 1:00

Maj. Brunson,

Please note the escorts for this meeting. Thanks

V/R

James L. Stewart  
Security Specialist  
Environmental Protection Agency  
OARM/Facilities Management and Services Division  
Headquarters Operations Branch  
Office: 202-564-7841  
Cell: 202-450-0284

Mailing Address:  
William Jefferson Clinton Federal Building  
1200 Pennsylvania Avenue NW MC 3204R  
Washington, DC 20460

Please send all security related emails to OARM-OA-HQ-OB. Thanks

“We must accept finite disappointment, but never lose infinite hope” Dr. Martin Luther King, Jr.

---

**From:** McGhee, Debra  
**Sent:** Friday, September 22, 2017 12:38 PM  
**To:** Stewart, JamesL <Stewart.JamesL@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>; SecurityOfficers <SecurityOfficers@epa.gov>  
**Cc:** Harrison, Brenda <Harrison.Brenda@epa.gov>; OARM-OA-HQ-OB <OARM-OA-HQ-OB@epa.gov>  
**Subject:** RE: Outside guests for Tuesday, September 26 at 1:00

Hello, Mr. Stewart and team –

Please note that, although Carla is setting up the meeting, we'd like to have someone other than Carla called when the guests arrive. Please contact Brenda Harrison, 564-6245, or me, Debra McGhee at 564-4646.

Thank you!

*Debra E. McGhee*  
Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** -- Martin Luther King, Jr., 18th April, 1959

---

**From:** Stewart, JamesL

**Sent:** Friday, September 22, 2017 11:04 AM

**To:** Veney, Carla <Veney.Carla@epa.gov>; SecurityOfficers <SecurityOfficers@epa.gov>

**Cc:** McGhee, Debra <mcghee.debra@epa.gov>; Harrison, Brenda <Harrison.Brenda@epa.gov>; OARM-OA-HQ-OB <OARM-OA-HQ-OB@epa.gov>

**Subject:** RE: Outside guests for Tuesday, September 26 at 1:00

Maj. Brunson,

Please notify the PSO's in the north lobby that the below federal and non-federal guests will be arriving on 9/26/17 for a 1 pm meeting. All nonfederal guests must present a valid photo ID, sign in, go thru security screening and be escorted. Carla Veney will be the POC. The below federal guests must present their federal ID's and sign in without going thru x-ray and mag. They also do not need an escort. Thanks

V/R

James L. Stewart  
Security Specialist  
Environmental Protection Agency  
OARM/Facilities Management and Services Division  
Headquarters Operations Branch  
Office: 202-564-7841  
Cell: 202-450-0284

Mailing Address:  
William Jefferson Clinton Federal Building  
1200 Pennsylvania Avenue NW MC 3204R  
Washington, DC 20460

Please send all security related emails to OARM-OA-HQ-OB. Thanks

"We must accept finite disappointment, but never lose infinite hope" Dr. Martin Luther King, Jr.

---

**From:** Veney, Carla

**Sent:** Friday, September 22, 2017 10:59 AM

**To:** Stewart, JamesL <Stewart.JamesL@epa.gov>

**Cc:** McGhee, Debra <mcghee.debra@epa.gov>; Harrison, Brenda <Harrison.Brenda@epa.gov>

**Subject:** Outside guests for Tuesday, September 26 at 1:00

Good Morning, our Acting General Counsel, Kevin Minoli will be hosting a meeting with outside stakeholders next week. The meeting will be held on Tuesday, September 26 from 1:00-3:00. The meeting location will be in 4045 WJC-N. Guests have been asked to arrive via the north entrance. The POC for this meeting will be Debra McGhee (564-4646) and Brenda Harrison (564-6245). So, please have security call either of them for escorts. The list of attendees are as follows:

Barbara Parker, Oakland City Attorney

Claudia Cappio, Assistant City Administrator  
Maria Bee, Special Counsel, City Attorney's Office  
Danny Wan, Port Attorney  
Allison Torrence, Partner with Jenner & Block (Port outside counsel)  
Michele Heffes, Assistant Port Attorney

We also have Department of Transportation employees attending in person. You might not need their names but I will provide them just in case. If they can just be allowed to come up to the 4<sup>th</sup> floor without an escort, that would be helpful. The list of attendees are as follows:

Yvette Rivera  
Howard Caro-Lopez  
Ryan Fitzpatrick  
Deeana Jang

Thank you!

Carla Veney  
Executive Assistant to the General Counsel  
Office of the General Counsel  
Environmental Protection Agency  
Telephone: (202) 564-1619

Message

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**From:** Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]  
**Sent:** 9/14/2017 2:58:02 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.  
**Attachments:** ALEA US DOT Signed MOA 12.22.16.pdf

We don't utilize standard language. But I can share with you our latest agreement, sure.

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312  
(202) 366-1979

---

**From:** McGhee, Debra [mailto:mcghee.debra@epa.gov]  
**Sent:** Thursday, September 14, 2017 10:32 AM  
**To:** Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>  
**Subject:** RE: As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.

Ryan – do you have an agreement that your agency has entered into recently that reflects your current standard language? I would love to look it over before the meeting. Thanks.

*Debra E. McGhee*  
Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in.”** ~ Martin Luther King, Jr. , 18th April, 1959

---

**From:** Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]  
**Sent:** Thursday, September 14, 2017 9:33 AM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Huezo, Hector (OST) <hector.o.huezo@dot.gov>; Cockfield, Erva (OST) <erva.cockfield@dot.gov>; Hart, Daryl (MARAD) <daryl.hart@dot.gov>; Kizito-Ramos, Rachel (MARAD) <Rachel.Kizito-Ramos@dot.gov>; grow.r@att.net  
**Subject:** RE: As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.

Good stuff Richard, we should definitely discuss these points today

**Ryan N. Fitzpatrick, Esq.**  
Lead Civil Rights Analyst  
Departmental Office of Civil Rights  
Office of the Secretary  
U.S. Department of Transportation  
W78-312

---

**From:** McGhee, Debra [mailto:mcghee.debra@epa.gov]

**Sent:** Thursday, September 14, 2017 9:32 AM

**To:** Grow, Richard <Grow.Richard@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Huezo, Hector (OST) <hector.o.huezo@dot.gov>; Cockfield, Erva (OST) <erva.cockfield@dot.gov>; Hart, Daryl (MARAD) <daryl.hart@dot.gov>; Kizito-Ramos, Rachel (MARAD) <Rachel.Kizito-Ramos@dot.gov>; grow.r@att.net  
**Subject:** RE: As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.

Thank you Richard. Good thoughts. We will keep your observations in mind during discussions today even if you are unable to join.

*Debra E. McGhee*

Team Lead

External Civil Rights Compliance Office

Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** -- Martin Luther King, Jr. , 18th April, 1959

---

**From:** Grow, Richard

**Sent:** Wednesday, September 13, 2017 10:37 PM

**To:** Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Huezo, Hector (OST) <hector.o.huezo@dot.gov>; Cockfield, Erva (OST) <erva.cockfield@dot.gov>; Hart, Daryl (MARAD) <daryl.hart@dot.gov>; Kizito-Ramos, Rachel (MARAD) <Rachel.Kizito-Ramos@dot.gov>; grow.r@att.net  
**Subject:** Re: As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.

Have to get some brief comments off tonite, on the road all day tomorrow and fielding the call driving across NM. Just mine (Richard) not able to coord with other R9.

# Deliberative Process / Ex. 5

# Deliberative Process / Ex. 5

Richard

Personal Matters / Ex. 6

---

**From:** Fitzpatrick, Ryan (OST) <[ryan.fitzpatrick@dot.gov](mailto:ryan.fitzpatrick@dot.gov)>

**Sent:** Wednesday, September 13, 2017 8:04 AM

**To:** Dorka, Lilian; Temple, Kurt; McGhee, Debra; Rhines, Dale; Keeler, Katsumi; Johnson, Johahna; O'Lone, Mary; Grow, Richard; Garnett, Desean; Rivera, Yvette (OST); Jang, Deeana (OST); Caro-Lopez, Howard (OST); Huezo, Hector (OST); Cockfield, Erva (OST); Hart, Daryl (MARAD); Kizito-Ramos, Rachel (MARAD)

**Subject:** RE: As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.

For discussion, I've attached DOT's comments on the EPA framework. Thanks again for taking the initiative on developing this.

Ryan

**Ryan N. Fitzpatrick, Esq.**

Lead Civil Rights Analyst

Departmental Office of Civil Rights

Office of the Secretary

U.S. Department of Transportation

W78-312

(202) 366-1979

-----Original Appointment-----

**From:** Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

**Sent:** Tuesday, September 12, 2017 2:29 PM

**To:** Dorka, Lilian; Temple, Kurt; McGhee, Debra; Rhines, Dale; Keeler, Katsumi; Johnson, Johahna; O'Lone, Mary; Grow, Richard; Garnett, Desean; Fitzpatrick, Ryan (OST); Rivera, Yvette (OST); Jang, Deeana (OST)

**Subject:** As Agreed -- Follow up on Last week's Convo to discuss Draft Framework/DOT Comments, etc.

**When:** Thursday, September 14, 2017 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Conference Call 1-866-299-3188 Code: 202-564-8151#

Call #

Conference Line/Code / Ex. 6

## Appointment

---

**From:** Rivera, Yvette (OST) [yvette.rivera@dot.gov]  
**Sent:** 9/20/2017 9:08:32 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]

**Subject:** Accepted: Preparation for September 26 Meeting with Oakland Port and City  
**Location:** Conference Call//ECRCO Conference Room

**Start:** 9/22/2017 6:00:00 PM  
**End:** 9/22/2017 7:00:00 PM  
**Show Time As:** Busy

**Recurrence:** (none)

Message

---

**From:** O'Lone, Mary [OLone.Mary@epa.gov]  
**Sent:** 11/16/2017 4:51:58 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** FW: Port of Oakland v. communities and EIP et al  
**Attachments:** BAAQMD ltr Port 11\_3\_17 Board Item 5.1.pdf; EIP et al re Center Point 11\_8\_17.pdf

Thanks, Mary

Mary M. O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel, US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

-----Original Message-----

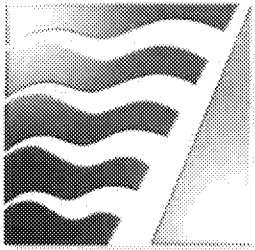
From: Grow, Richard  
Sent: Tuesday, November 14, 2017 10:08 PM  
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>  
Cc: Strauss, Alexis <Strauss.Alexis@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Israels, Ken <Israels.Ken@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>  
Subject: Port of Oakland v. communities and EIP et al

All

While the positive version of the story about the Port "greenlighting" the \$52M CenterPoint project is getting wide circulation, I've attached the critical comments from EJ and community groups as well as BAAQMD regarding this particular development. To understand the context it may help to know that the developer and his allies have from the start portrayed the stakes as jobs v. the environment, and in particular minority jobs v. the environment. Nevertheless the EIP has steadfastly advocated for both jobs and the environment, as well as the OAB redevelopment project itself, and worked within coalitions around both the jobs and public health issues. Below is a typical story regarding the Port Commission's decision last week.

<http://hoodline.com/2017/11/port-of-oakland-green-lights-52m-distribution-center>

Richard



**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

**ALAMEDA COUNTY**  
Pauline Russo Cutter  
Scott Haggerty  
Rebecca Kaplan  
Nate Miley

**CONTRA COSTA COUNTY**  
John Gioia  
David Hudson  
(Vice Chair)  
Karen Mitchoff  
Mark Ross

**MARIN COUNTY**  
Katie Rice  
(Secretary)

**NAPA COUNTY**  
Brad Wagenknecht

**SAN FRANCISCO COUNTY**  
Edwin M. Lee  
Hillary Ronen  
Jeff Sheehy

**SAN MATEO COUNTY**  
David Canepa  
Carole Groom  
Doug Kim

**SANTA CLARA COUNTY**  
Margaret Abe-Koga  
Cindy Chavez  
Liz Kniss  
(Chair)  
Rod G. Sinks

**SOLANO COUNTY**  
Pete Sanchez  
James Spering

**SONOMA COUNTY**  
Teresa Barrett  
Shirlee Zane

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

Connect with the  
Bay Area Air District:



November 3, 2017

Joan H. Story  
President, Board of Port Commissioners  
**Port of Oakland**  
30 Water Street  
Oakland, CA 94607

**Subject: Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners (Board):

The Bay Area Air Quality Management District (Air District) has reviewed Agenda item 5.1 on your November 9, 2017 meeting and is requesting that the Board:

- Delay approval of any resolution or ordinance on this item until the Port of Oakland (Port) has developed and funded the emission reduction programs (in concert with the City of Oakland (City)) identified by the former Oakland Army Base (OAB) Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and
- Developed criteria via a public process to determine when low emission equipment or strategies are "readily available" or "cost effective."

As currently drafted, Agenda item 5.1 seeks to authorize the Port of Oakland (Port) Executive Director to enter a ground lease with CenterPoint-Oakland Development I, LLC, (the Developer) for the design, construction, finance, operation, and maintenance of a transload and distribution facility (Project). The proposed Project seeks to build a 440,800-square foot facility with approximately 140 dock doors, and parking for 365 autos and 70 trailers for warehouse, storage, other maritime trade and logistics uses. The proposed location is approximately 27 acres at the former Oakland Army Base (OAB) land the Port has named the Seaport Logistics Complex.

As stated in the Board's Agenda Report, this and any project on the former OAB is required to comply with the OAB Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). As you may recall, the SCA/MMRP was adopted by the Oakland City Council (City) and the Port to mitigate the significant health and air quality impacts expected to occur in the West Oakland community and impacts to regional air quality resulting from the build out of the OAB. However, many the SCA/MMRPs require the City and the Port to develop emission reduction programs that have not been developed, such as:

- MM 4.4-3a: "The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels..."
- MM 4.4-4 "The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels ...."
- MM 4.4-5: "Major developers shall fund on a fair share basis BAAQMD – recommended feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations, as well as all CAP [Clean Air Plan] TCMs the BAAQMD has identified as appropriate for local implementation ...."
- MM 4.4-6: "...the City and Port shall implement sustainable development policies and strategies related to new development design and construction..."
- MM 5.4-1: "The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality..."
- MM GCC-1: "The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan..."
- Some of the mitigation measures include language that would require emission reduction actions only if low emission equipment or strategies are "readily available" or "cost effective".

To date, neither the City nor the Port has developed or funded the emission reduction programs identified above or developed any criteria to determine when low emission equipment or strategies are "readily available" or "cost effective." The Air District recommends that the Port develop the emission reduction programs and guidance identified above in a forum that seeks public input prior to acting on this Project. The Air District believes that any resolution adopted by the Board relative to this project should include clear language and direction to staff and the proposed tenants/operators that ensures the maximum use of zero and near zero emission equipment at the time of building permit issuance, and requires upgrades into the future as fully zero emissions equipment options become available.

To assist the Board, City and Port in determining what is "readily available" or "cost effective," the Air District has attached its draft "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base," (August 2017) document. The Air District is currently finalizing this document in consultation with both Port and City staff and expects some minor changes to it based on those discussions. However, the technology suggestions in this document

have been reviewed by the California Air Resources Board and represent what the Air District believes to be most protective of community health and air quality relative to equipment that is currently and reasonably available.

West Oakland remains the most disproportionately impacted community in the Bay Area due in part to its proximity to the Port. Since 2001, the Air District has invested over 80 million dollars of public funds to reduce diesel particulate matter (DPM) emissions from Port truck, maritime and rail operations and over \$50 million to reduce emissions on adjacent highways. In 2018, the Air District projects another approximately \$70 million dollars in incentive funds will be available for the purchase of zero and near zero emission equipment and technologies that could be used at the Port and OAB. The Air District stands ready to assist current and prospective tenants/operators at the Port and OAB in taking advantage of these funds.

However, these incentives alone cannot address the air quality related health issues in the West Oakland community. It is important that the Board play a leadership role in reducing the impacts of the Port's operations by directing its staff to honor the spirit and letter of the mitigation measures required in the SCA/MMRP. This includes specifying requirements for zero and near zero equipment and operations as part of new leases and ordinances.

Air District staff is available to assist the Board or Port staff with questions about these comments. If you have any questions, please contact Alison Kirk, Senior Planner, at (415) 749-5169 or [akirk@baaqmd.gov](mailto:akirk@baaqmd.gov).

Sincerely,

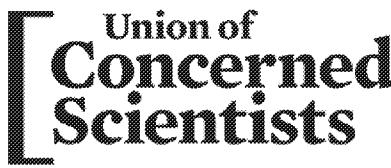
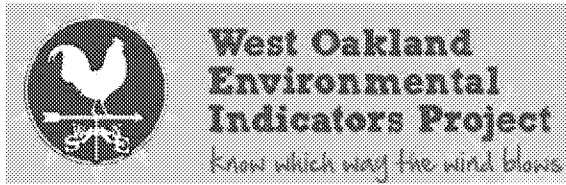


Damian Breen

Deputy Air Pollution Control Officer

Attachment: BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base – Draft Document (August 2017)

cc: BAAQMD Director Pauline Russo Cutter  
BAAQMD Director Scott Haggerty  
BAAQMD Director Rebecca Kaplan  
BAAQMD Director Nate Miley  
Cynthia Marvin, California Air Resources Board  
Claudia Cappio, City of Oakland  
Richard Grow, EPA  
Matt Lakin, EPA  
Ben Machol, EPA



November 8, 2017

Joan H. Story  
President, Board of Port Commissioners  
Port of Oakland  
30 Water Street  
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners,

These comments are submitted on behalf of the signatories below to request that the Board of Port Commissioners (“Board”) delay approval of the lease with CenterPoint-Oakland Development I, LLC (“Developer”) until the Board and Port of Oakland (“Port”) ensure that the Developer will take all possible steps to minimize air pollution impacts and to be a good neighbor to surrounding communities.

The Board should delay action on this item until the Port has completed a public process on the environmental and public health impacts of this facility. The Port held a series of public meetings regarding this project, but those meetings focused on jobs. West Oakland Environmental Indicators Project requested that the Port include environmental issues in these meetings and Port staff told West Oakland Environmental Indicators Project that environmental issues would be addressed later. Yet, the environmental and public health impacts never were addressed and this proposal reflects that oversight. This dismissal of community requests to provide input on environmental concerns is part of a disturbing pattern highlighted in the April 4, 2017 Title VI complaint filed with the U.S. Department of Transportation and U.S. Environmental Protection Agency (see Attachment).

As the Bay Area Air Quality Management District (“District”) noted in its November 3, 2017 letter to the Board, the proposal does not comply with many of the criteria in the Oakland Army

Base's Environmental Impact Report Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). The Agenda Report for this item states that the Developer will comply with the SCA/MMRP, but the Port has not taken any action yet to fulfill the SCA/MMRP's requirements. We agree with the comments submitted by the District and urge the Board to heed the District's recommendations regarding the SCA/MMRP.

In addition, the Agenda Report does not include all of the mitigation requirements that were included in the City of Oakland's ("City's") agreement with Prologis for its lease at the former Oakland Army Base. For example, the Prologis agreement requires Prologis to limit idling to three minutes and to use "zero and near-zero emission equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area."<sup>1</sup> At the very least, the Port should require the Developer to meet the same requirements that Prologis has committed to achieve.

The Board should ensure that its ordinance and resolution, if adopted, clearly state that the Developer must utilize zero and near zero emission technology<sup>2</sup> everywhere possible. To achieve the directives in the SCA/MMRP, the Port also will need to fund emission reduction programs at the Port and in the communities the Port impacts. The Board should work with the District and the California Air Resources Board to facilitate the widespread adoption of zero and near zero emission technologies throughout the former Oakland Army Base and in impacted communities.

To reduce emissions and improve air quality in impacted communities, the Port must adopt a different approach to planning for construction and operation of facilities at the former Oakland Army Base. The Port proposes to continue its pattern of treating the construction and operation phases as two distinct entities, even though facility design can affect emissions associated with facility operation. The Port should require developers to construct and design facilities to maximize emission reduction potential and facilitate the use of zero and near zero emission technologies during the operation phase.

Using zero and near zero emission vehicles and equipment at the Oakland Army Base is critically important due to the impact the development will have on West Oakland and communities all along the freeways that serve the Port. West Oakland is a community of color that faces disproportionate environmental impacts, which are caused in part by pollution generated at or associated with the Port (see Attachment, pp. 9-21). Other communities along freeways serving the Port (such as the I-880 corridor) also experience disproportionate impacts due in part to the truck traffic moving through their communities to the Port. Approving this lease without a public process and without clear instructions to use zero and near zero emission technologies during construction and operation will lock in years of unnecessary, dangerous emissions from the use of combustion fuel technologies where zero and near zero emission alternatives are available.

The Port has an opportunity here to send a message to the community: including more stringent emission reduction requirements for the Developer would signal that the Port intends to start

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<sup>1</sup> Prologis Oakland Global Logistics Center. "Diesel Emissions Reduction and Air Quality Plan for Construction of CE-2: Southeast Gateway Parcel, CC-1: New Central Gateway Parcel," p. 7 (August 13, 2017).

<sup>2</sup> We define "near zero emission" technologies to include technologies that allow vehicles and equipment to operate fully zero-emissions for some period of time (such as hybrid electric vehicles).

making real changes that benefit the health and wellbeing of West Oakland residents. Allowing the lease to proceed as-is sends a far different message. We urge the Port to delay action on this item and to revise the ordinance and resolution so that they set clear and stringent emission reduction requirements for the Developer.

Thank you for the opportunity to comment.

Sincerely,



Adenike Adeyeye  
Senior Research and Policy Analyst  
Earthjustice

Margaret Gordon and Brian Beveridge  
Directors  
West Oakland Environmental Indicators  
Project

Luis Amezcua  
Chair  
Sierra Club, Northern Alameda County Group

Rev. Earl W. Koteen  
Sunflower Alliance

Kevin D. Hamilton, RRT, CEO  
Central California Asthma Collaborative

Frank Gallo  
Ditching Dirty Diesel Collaborative

Jimmy O'Dea  
Senior Vehicles Analyst  
Union of Concerned Scientists

Bill Magavern  
Policy Director  
Coalition for Clean Air

Bradley Angel  
Executive Director  
Greenaction for Health and Environmental  
Justice

Joel Ervice  
Associate Director  
Regional Asthma Management and  
Prevention

Taylor Thomas  
Research & Policy Analyst  
East Yard Communities for Environmental  
Justice

Attachment: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (April 4, 2017).

Cc: Ryan Fitzpatrick, U.S. Department of Transportation  
Velveta Golightly-Howell, U.S Environmental Protection Agency (EPA)  
Richard Grow, U.S. Environmental Protection Agency (EPA)  
Yana Garcia, California Environmental Protection Agency

# **ATTACHMENT**

Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d  
(April 4, 2017)



*By electronic and certified U.S. mail*

April 4, 2017

Attn: Ryan Fitzpatrick  
Lead Civil Rights Analyst, Department of Transportation  
Departmental Office of Civil Rights  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590  
ryan.fitzpatrick@dot.gov

Attn: Velveta Golightly-Howell  
Director, Office of Civil Rights  
United States Environmental Protection Agency  
U.S. EPA Office of Civil Rights (Mail Code 1201A)  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460  
Title\_VI\_Complaints@epa.gov

Attn: Daria Neil  
Deputy Chief, Federal Coordination and Compliance Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Daria.neal@usdoj.gov

Re: **Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d**

On behalf of the communities of West Oakland, the West Oakland Environmental Indicators Project (WOEIP or “Complainant”) submits this Complaint regarding the City of Oakland’s (“City”) pattern of neglect and systemic disregard for the health and wellbeing of West Oakland’s residents, as demonstrated by its continuous authorizations of expanded freight infrastructure activities at the Port of Oakland and the former Oakland Army Base (“OAB”) while failing to ensure adequate health and safety protections for the surrounding community. Complainant also files this complaint against the Port and the Board of Port Commissioners (collectively referred to as “Port”), for continuously expanding the Port’s maritime, shipping, and transport activities in a manner that similarly exposes West Oakland residents to severe air pollution emissions without adequate mitigation.

The City and Port have engaged in the activities described in this Complaint to manipulate decision making and push through harmful expansions of freight activities for decades. Both parties have refused to engage in a meaningful analysis or process by which to address the negative health and environmental implications of their actions. Time and time

again, both the City and Port have dismissed the consistent input and opposition to their actions from directly impacted West Oakland residents, nearly 80% of whom are people of color, as well as from other agencies concerned about the problems such activities are creating.

The most recent example of the actions that are the subject of this Complaint is the City's approval of the first of a series of development-specific air quality management plans authorizing the construction of a new large-scale global trade and logistics development project located on OAB property. On October 4, 2016, the City Administrator approved a construction management plan for the Northeast Gateway development project site of the OAB, allowing developers, Prologis and the California Capital and Investment Group ("CCIG") to break ground on November 1, 2016, and begin construction for an expansive new warehouse and logistics development project – the "Oakland Global Logistics Center" – the full effects of which neither the City nor the Port have fully analyzed or addressed. This approval, and the City's continued authorization of new development and expanded activities at the Port and OAB create an unjustified disproportionate adverse impact on the basis of race, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the implementing regulations of the United States Department of Transportation ("DOT"), 49 C.F.R. Part 21, and the United States Environmental Protection Agency ("EPA"), 40 C.F.R. Part 7.

Title VI prohibits entities receiving federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Both the City and Port receive federal financial assistance from DOT, EPA and other federal agencies.<sup>1</sup> They are, therefore, subject to Title VI's prohibition against discrimination. The City and Port violate that prohibition by forcing through freight expansion projects that disproportionately subject the communities of color that surround both the Port and OAB properties to air pollution and other serious health threats on the basis of their race.

As an initial step in addressing the violations set forth in this complaint, Complainant requests that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this Complaint, and investigate whether the City and Port have indeed violated, and/or continue to violate Title VI of the Civil Rights Act and its implementing regulations in issuing their approvals to expand freight-related activities at the Port and OAB.<sup>2</sup> For reasons of economy, Complainant further requests that these investigations be consolidated and that EPA and DOT collaborate and coordinate the development and implementation of remedial approaches designed to address the City's and Port's violations. Because both the City and Port are most consistently funded by DOT in matters pertaining to the approvals and the activities at issue here, DOT is well poised to take the lead role at the federal level. Complainant also includes the Civil Rights Division of the Department of Justice in this Complaint, in anticipation

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<sup>1</sup> While not the subject of this complaint, the Port, which operates as a fully independent department of the City, receives substantial federal assistance in the form of monetary grants and gifts consisting of real property from the Department of Defense, the United States Army, and the United States Department of Homeland Security.

<sup>2</sup> Complainant also specifically requests that if either DOT or EPA rejects this complaint, the other agency conduct an investigation alone or jointly with other federal agencies, as appropriate, in accordance with federal regulations. See 28 C.F.R. § 42.408(b) ("Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency . . .").

that they too would play an active role in coordinating these federal investigative and enforcement actions, consistent with the mission of the Federal Coordination & Compliance Section.

In order to remedy the violations set forth in detail below, Complainant requests that DOT and EPA condition all future grants and awards of federal funds to the City and Port on both entities furnishing adequate assurances that their actions with respect to the activities taking place at the Port and OAB properties will address disproportionate impacts on the surrounding community. Specifically, WOEIP requests that the City and Port implement and adhere to appropriately tailored, updated mitigation measures that will address the harmful externalities of the Port's industrial and freight activities – including any and all new and expanded activities occurring at the OAB – and that both the City and Port commit to a meaningful, continuous process for receiving and incorporating input from the West Oakland community.

## **I. PARTIES**

### **A. Complainant**

WOEIP is a neighborhood resident-led, community-based environmental justice organization located in West Oakland, California. The organization is dedicated to achieving healthy homes, healthy jobs, and healthy neighborhoods for all who live, work, learn and play in their community. Through engaging in research projects and participating in agency advisory committees as well as stakeholder groups, WOEIP focuses on leveraging community power to support residents in developing and achieving their own vision for healthy neighborhoods, which includes, among other things, clean soil and vibrant surroundings, clean air and clean water, and a resident-led comprehensive vision for redevelopment and economic revitalization in and around West Oakland.<sup>3</sup>

### **B. Recipients**

The City is a municipal corporation, ordained and established under the California Constitution. *See* Charter of the City of Oakland art. I. § 100<sup>4</sup>; *see, also*, Cal. Const. art. XI, § 5. As such, the City has the right and the power to make and enforce all laws and regulations relating to its municipal affairs. Charter of the City of Oakland art I. § 106. The City is a recipient of federal funds, as detailed below.

The Port was established in 1927. It operates as a fully independent City department, created by the City pursuant to the City's governing charter. Charter of the City of Oakland art. VII, §700. In creating the Port Department, the City vested “exclusive control and management” of the Port in the Board of Port Commissioners, which is comprised of members nominated by

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<sup>3</sup> *See* West Oakland Environmental Indicators Project website, *available at* <https://www.woeip.org> (last accessed, March 28, 2017).

<sup>4</sup> *Available at:* [https://www.municode.com/library/ca/oakland/codes/code\\_of\\_ordinances?nodeId=THCHOA\\_ARTVIIPOOA](https://www.municode.com/library/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA_ARTVIIPOOA) (last accessed on March 28, 2017).

the City's Mayor and appointed by the City Council. *Id.* §701. The Board of Port Commissioners has "complete and exclusive power" over the "Port Area." *Id.* All moneys appropriated by the Board and all revenue from the operation of the Port are under the exclusive control of the Board and are deposited in a special "Port Revenue Fund" in the City's treasury. *Id.* §§ 717(2), (3). Like the City, the Port is a recipient of federal funds, as detailed below.

## **II. JURISDICTION**

The prohibition against racial discrimination set forth in Title VI applies to all recipients of federal funds: "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The acceptance of federal funds in itself creates an obligation on the part of the recipient to comply with Title VI and the federal agencies' implementing regulations.

As explained below, the City and Port are recipients of federal funds and implement programs or activities receiving continuous federal financial assistance. They are, therefore, subject to the requirements of Title VI and its applicable implementing regulations.

### **A. Program or Activity**

Title VI defines a program or activity as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a. Accordingly, if any part of a listed entity receives federal funds, the whole entity is covered by Title VI. *Ass'n. of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-5 (9th Cir. 1999), rev'd in part on other grounds, 231 F.3d 572 (9th Cir. 2000) (en banc).

The actions undertaken by the City and Port are taken as part of a program or activity because the City is its own municipal government entity, and the Port is a department of the City as set forth in the City's charter. Charter of the City of Oakland art. VII, §§ 700, 701. Indeed, the City created the Port's Board of Commissioners specifically to act for and on behalf of the City in any matter within the jurisdiction of the Board, which includes all areas that are part of the Port's operations. Charter of the City of Oakland art. VII, §701. Both the City and Port, including the Board of Port Commissioners, receive federal funds, as explained below.

The City Administrator is also appointed by the City's Mayor, subject to confirmation by the City Council, and is directly accountable to the Mayor's office. *See*, City of Oakland Municipal Code, Title 2, Ch. 2.29, sec. 170 (establishing the Office of the City Administrator). The Administrator is responsible for the day-to-day administrative and fiscal operations of the City, and directs City agencies and departments to ensure the goals and policy directives of the Mayor and City Council are implemented. *See, id.* The responsibilities of the Administrator's Office include: enforcing all laws, ordinances, and policies of the Council; attending all meetings of the Council, Council Committees, boards, and commissions; making recommendations to the Council concerning City affairs; controlling and administering the financial affairs of the City and keeping the Council apprised of these affairs; preparing or directing preparation of the plans,

specifications, and contracts for work the Mayor or Council may order; and coordinating all projects, policies, and directives assigned to the Administrator by the Council or by the Mayor.<sup>5</sup> Accordingly, the specific actions and approvals undertaken by the City Administrator are also part of a program or activity, as they are taken with the full authority of the City. As outlined below, the infrastructure, shipping, transport, and logistics programs and activities approved by the City, Port, and the City Administrator that are the basis for this Complaint receive federal financial assistance.

## **B. Federal Financing/Federal Financial Assistance**

The City and Port receive federal financial assistance as defined in DOT's and EPA's Title VI implementing regulations.

### **1. DOT Funds Received by the City and Port**

DOT regulations define "[r]ecipient" as "any State . . . or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State . . . to whom Federal financial assistance is extended, directly or through another recipient. . . ." 49 C.F.R. § 21.23.

In Fiscal Year (FY) 2010, the City of Oakland received a considerable Transportation Investment Generating Economic Recovery (TIGER) planning grant in the amount of \$2 million to support the City's estimated \$9,220,000 planning efforts for "sustainable transit oriented planning" at the "[OAB] Redevelopment Area."<sup>6</sup> According to the grant description, DOT's grant of these funds was aimed at aiding the City's development of "an Infrastructure Master Plan", and associated environmental review, "to direct needed utilities and roadway improvements for the former [OAB]."<sup>7</sup> The project considered under the terms of this grant also involved a "Specific Plan" and associated environmental review "to guide future development in West Oakland" and to specifically develop a framework for addressing "undervalued and blighted land in the West Oakland community" where the per capita income was, in that year, less than fifty percent of the county average.<sup>8</sup>

DOT has also awarded substantial TIGER funds to the Port. For example, in FY 2012 DOT awarded the Port approximately \$15 million in TIGER grant funds to develop a new Port

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<sup>5</sup> City of Oakland, *City Administration: Welcome*, available at: <http://www2.oaklandnet.com/government/o/CityAdministration/index.htm> (last accessed March 30, 2017).

<sup>6</sup> See, United States Department of Transportation, *US DOT TIGER II Planning Grants*, available at: <https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf> (last accessed March 30, 2017).

<sup>7</sup> See, United States Department of Transportation, *US DOT TIGER II Planning Grants*, available at: <https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf> (last accessed March 30, 2017).

<sup>8</sup> See, United States Department of Transportation, *US DOT TIGER II Planning Grants*, available at: <https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf> (last accessed March 30, 2017).

Rail Terminal serving Port property.<sup>9</sup> Moreover, DOT consistently funds the Port with large grants specifically intended for airport improvements. While these funds do not directly benefit the OAB properties at issue here, the duration and scale of this funding is important to note. The following is a list of DOT's airport improvement program grants to the Port between FY 2008 and FY 2016:

FY 2008 - \$11,967,919  
FY 2009 - \$18,317,487  
FY 2010 - \$15,706,402  
FY 2011 - \$7,559,904  
FY 2012 - \$32,753,747  
FY 2013 - \$18,245,770  
FY 2014 - \$41,578,114  
FY 2015 - \$11,395,060  
FY 2016 - \$7,324,847

In FYs 2013 and 2014, the Port was also sub-granted \$983,928 and \$312,263, respectively, in funds originating from DOT, but awarded to the California Department of Transportation (Caltrans) to pay for ongoing operations at the Port.<sup>10</sup>

## **2. EPA Funds Received by the City and Port**

Similar to DOT's regulations, EPA's Title VI regulations define a "[r]ecipient" as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient . . . ." 40 C.F.R. § 7.25.

Between FY 2006 and FY 2010, the City received two consecutive two-year block grants totaling \$800,000 over the course of four years, from EPA, to ensure brownfield cleanup, including clean up in and around the community of West Oakland.<sup>11</sup>

Starting in 2013, EPA awarded the Port \$282,293 to reduce air pollution from the Port's gantry cranes, through EPA's National Clean Diesel Reduction Program.<sup>12</sup> In FY 2014 EPA also

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<sup>9</sup> See United States Department of Transportation, *TIGER 2012 Awards*, available at: [https://www.transportation.gov/sites/dot.gov/files/docs/fy2012tiger\\_0.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/fy2012tiger_0.pdf) (last accessed March 30, 2017).

<sup>10</sup> USASpending.gov, *Recipient Profile: Port of Oakland*, available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2013> (last accessed March 30, 2017).

<sup>11</sup> See, USASpending.gov, *Recipient Profile: City of Oakland California*, available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=137137977&FiscalYear=2010> (last accessed, March 30, 2017), and see USASpending.gov, *Award Summary: City of Oakland*, available at: <https://www.usaspending.gov/transparency/Pages/AwardSummary.aspx?awardId=14192643> (last accessed, March 30, 2017).

<sup>12</sup> See, USASpending.gov, *Award Summary: Board of Port of Commissioners of the Port of [sic]*, available at: <https://www.usaspending.gov/transparency/Pages/AwardSummary.aspx?awardId=12519152> (last accessed, March 30, 2017).

awarded the Port and additional \$415,932 through the same program,<sup>13</sup> and in FY 2015, EPA granted another \$133,639 to the Port, to support the Port's continued efforts to reduce air pollution from port-related operations.<sup>14</sup>

### C. Timeliness

This complaint is timely because it is based on the City's and the City Administrator's continuous and ongoing approvals of a series of construction and operation management plans concerning the OAB "Gateway" Redevelopment Project, which is one part of a multi-stage large scale development project called the Oakland Global Logistics Center development, and is likewise part of the Port's continued expansion of its shipping, receiving, storage distribution and freight transport activities. Both DOT and EPA instruct Title VI complainants to file their complaints within 180 days of the alleged discriminatory act.<sup>15</sup> 49 C.F.R. § 21.11(b) (DOT Title VI regulations); 40 C.F.R. § 7.120(b) (EPA Title VI regulations).

On October 4, 2016, the City approved a construction management plan that allowed Prologis and CCIG to break ground on the Northeast Gateway OAB site on November 1, 2016.<sup>16</sup> The operation management plan for the Northeast Gateway project, and the construction and operation management plans for the remaining "Gateway" areas of the OAB remain subject to ongoing similar approvals from the City. The City's October 4, 2016 action is, therefore, one of many piecemealed development-related approvals that will continue to occur.

This complaint is timely because it is filed within 180 days of the City's October 4, 2017 approval and subsequent construction at the Northeast Gateway site. Moreover, because the actions alleged in this Complaint are part of a long history of discriminatory actions that are both ongoing, and slated to continue in subsequent approval processes, Complaint requests that DOT and EPA waive any potential objections related to the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

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<sup>13</sup> See, USASpending.gov, recipient profile for the "Port of Oakland" and "Board of Port Commissioners," FY 2014, DUNS no. 009235326, available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2014> (last accessed, March 30, 2017).

<sup>14</sup> USASpending.gov, *Recipient Profile: Board of Port Commissioners of the Port of Oa* [sic], available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2015> (last accessed, March 30, 2017).

<sup>15</sup> DOT and EPA, moreover, have the authority and the discretion to waive or extend the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

<sup>16</sup> See, Annie Sciacca, *Oakland Army Base redevelopment project breaks ground*, East Bay Times, (November 1, 2016), available at: <http://www.eastbaytimes.com/2016/11/01/oakland-army-base-redevelopment-project-breaks-ground/> (last accessed, March 30, 2017).

#### **D. Other Prudential Factors and/or Jurisdictional Considerations**

This Complaint satisfies all other jurisdictional and prudential considerations laid out in both DOT's and EPA's regulations implementing Title VI. The Complaint also meets EPA's guidance set forth in its Interim Case Resolution Manual.<sup>17</sup>

Specifically, this Complaint is submitted to both agencies in writing, by and on behalf of a Complainant group that is authorized to submit such a complaint to redress the adverse impacts this group experiences directly and which other, similarly situated residents also experience as a result of both the Port's and City's violations of Title VI.

DOT and EPA have subject matter jurisdiction over this Complaint because it alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. This Complaint also contains unique civil rights allegations that have not been alleged in any court or administrative proceeding, and which are specific to the City's and Port's systemic pattern of issuing project approvals and/or engaging in activity at and surrounding the Port and OAB properties in a manner that causes disproportionate effects to the surrounding residential community, on the basis of race.

Moreover, this Complaint seeks unique relief from DOT and EPA — compliance with Title VI. Complainant asks DOT and EPA to investigate this Complaint and take steps to remedy noncompliance with Title VI by the City and Port, including conditioning any and all future federal funding. This relief is not available through other means.

### **III. FACTUAL BACKGROUND**

#### **A. The Residents and Community of West Oakland**

##### **1. West Oakland's History and Demographics**

West Oakland is a diverse community with a rich history and a historically vibrant culture dating back to the late nineteenth century. In the 1800s and early 1900s, West Oakland was home to many European, Japanese, and Chinese immigrants, Mexicans, and a large number of African Americans who migrated from the South for jobs in the auto and rail industries. As military activities expanded at the OAB, and new job opportunities in the Port's shipyards increased, West Oakland experienced an even greater influx of mostly small-business growth,

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<sup>17</sup> See, e.g., United States Environmental Protection Agency, *Case Resolution Manual*, Chapter 2 (January 2017), available at [https://www.epa.gov/sites/production/files/2017-01/documents/final\\_epa\\_ogc\\_ecrco\\_crm\\_january\\_11\\_2017.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf) (last accessed, March 30, 2017).

which, in addition to the OAB's activities included many local shops that were owned by, and served, West Oakland residents.<sup>18</sup>

In the late 1900's, however, West Oakland experienced a decline in its relative economic vitality.<sup>19</sup> While it remains a mostly working-class community, the median household income in zip code 94607, which encompasses most of West Oakland today, is \$35,837.<sup>20</sup> For comparison, the median income of Alameda County is \$67,169.<sup>21</sup> Over 30% of individuals living in zip code 94607 live below the poverty level.<sup>22</sup> In Alameda County as a whole, only 13.5% of individuals live below the poverty level.<sup>23</sup> As *Figure 1* indicates, poverty has been a long term issue in West Oakland, with the entire community experiencing either persistent (five decades long), or frequent (three to four decades long), high poverty rates.

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<sup>18</sup> See, e.g., Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Ch. 1.1 "[OAB] Location, History and Setting", p. 13 (July 31, 2012) (describing some of the historical background of the region, and in particular of the OAB, and its surroundings), available at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

<sup>19</sup> County of Alameda, CA, *Demographics*, available at <https://www.acgov.org/about/demographics.htm> (last accessed March 30, 2017); United States Census Bureau, *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed March 30, 2017).

<sup>20</sup> United States Census Bureau. *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed March 30, 2017).

<sup>21</sup> County of Alameda, CA, *Demographics*, available at <https://www.acgov.org/about/demographics.htm> (last accessed March 30, 2017).

<sup>22</sup> United States Census Bureau. *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed March 30, 2017).

<sup>23</sup> County of Alameda, CA, *Demographics*, available at <https://www.acgov.org/about/demographics.htm> (last accessed March 30, 2017).

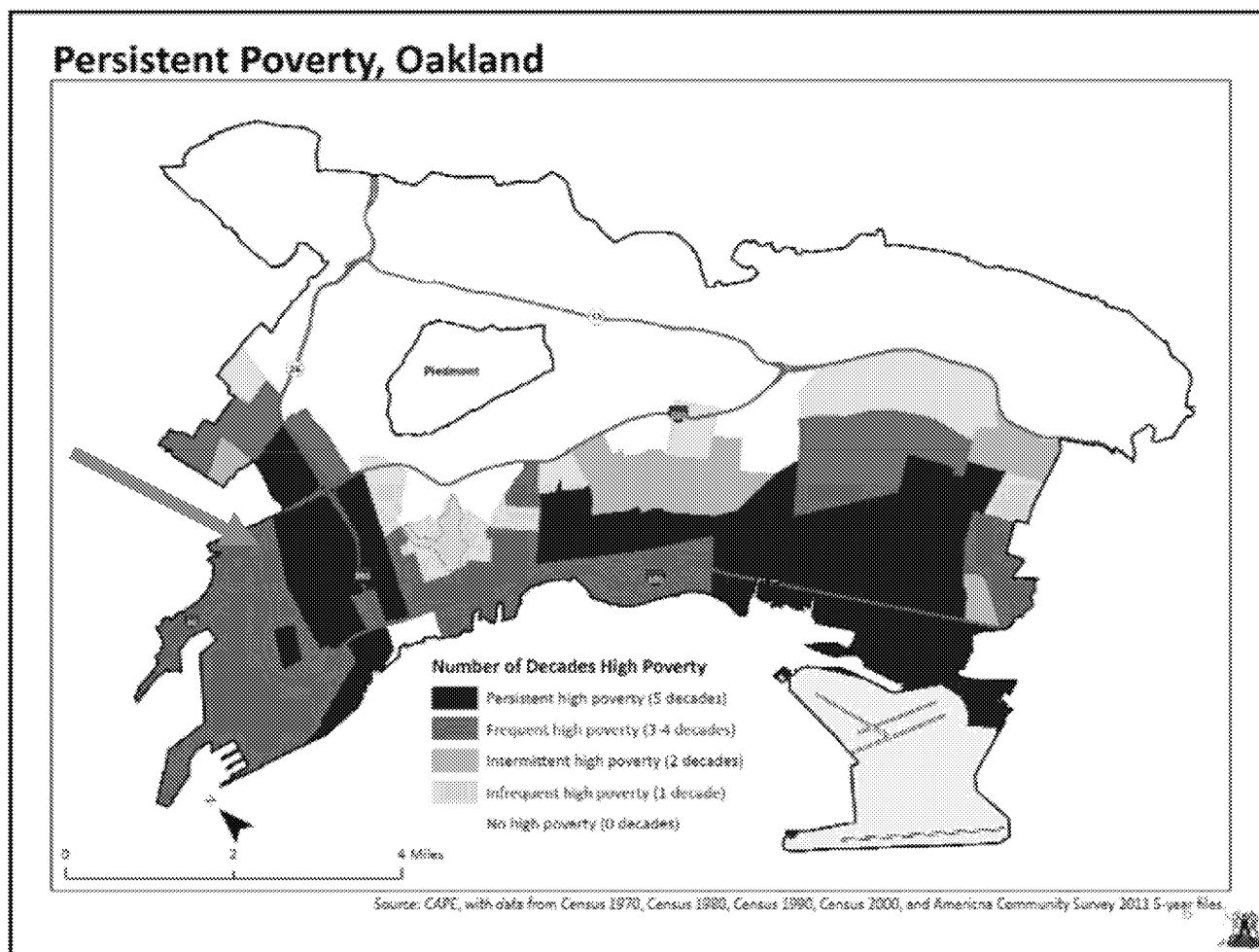


Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).<sup>24</sup>

Most importantly for the purpose of this Complaint, and the allegations set forth herein, West Oakland remains primarily a community of color. Approximately 49 percent of West Oakland residents today are Black, 17 percent identify as Latino, 15 percent identify as White, and nearly 13 percent identify as Asian.<sup>25</sup> In Alameda County overall, 51 percent of Alameda County residents are White, only 12 percent are Black, 30 percent are Asian, and 23 percent are Latino.<sup>26</sup>

<sup>24</sup> Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015), p. 6.

<sup>25</sup> Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015), p. 3.

<sup>26</sup> United States Census Bureau, *Quick Facts: Alameda County, California* (2015), available at <https://www.census.gov/quickfacts/table/PST045216/06001> (last accessed March 30, 2017).

## 2. Health and Pollution Burdens Affecting West Oakland

The largely residential community of West Oakland is surrounded by the Port and OAB, and by freeways. Specifically, as shown in *Figure 2*, three interstate freeways, the I-580, I-880 and I-980 freeways, surround West Oakland with the Port and OAB surrounding the community to the West and South.

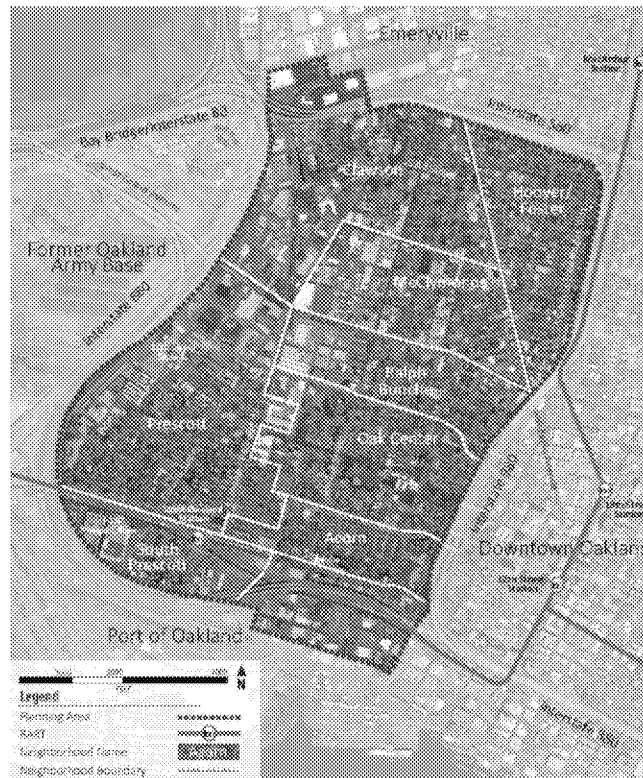


Figure 2 Map of the community of West Oakland.<sup>27</sup>

In addition to housing the Port, which is the fifth busiest container port in the United States, West Oakland is also home to two rail yards, with expansive and growing rail road tracks that are owned and operated by Union Pacific (“UP”), and the Burlington Northern and Santa Fe Railroad Company (“BNSF”). While not pictured above, West Oakland also has numerous trucking-based distribution centers and a host of related businesses including mechanical and body repair shops as well as large diesel gas stations that serve various activities taking place at the Port and OAB.

Thus, while this community has many aspects of unique physical beauty, including many nineteenth century Victorian-era historical buildings, an important and meaningful history, as

<sup>27</sup> City of Oakland, *West Oakland Specific Plan* (area map), available at <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK028334> (last accessed, April 3, 2017).

well as vibrant cultural traditions, today, its residents experience an overwhelming and disproportionate burden of health and environmental risks caused by the activities surrounding their homes and schools. For example, the Oakland Unified School District (OUSD) has identified the three elementary schools, two middle schools, and three high schools located in West Oakland and serving the West Oakland community as showing the highest “environmental stress indicators” based on students’ exposure to poor air quality and inadequate access to healthy foods, among other environmental risks.

## Environmental Stress Factors

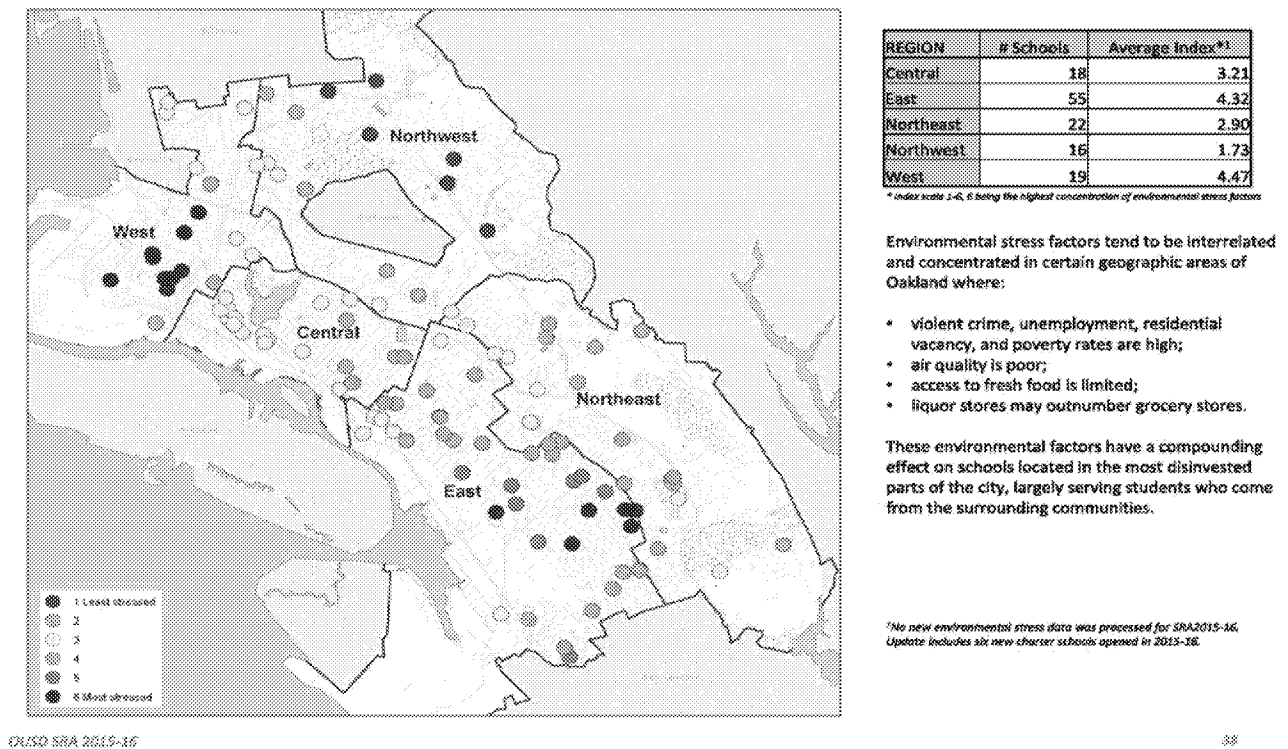


Figure 3 Environmental stress factors by school.

In addition, there are two preschools and at least one formal, reported day-care center, which, while not included in the OUSD map above, are located in close proximity to the Port and the

freeways surrounding West Oakland.<sup>28</sup> These childcare facilities are exposed to the same stress indicators, including poor air quality, as the OUSD-reported schools shown in *Figure 3*, yet with potentially even more devastating impacts, considering the age and size of the children attending these care facilities.

Notably, most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB. Trucks serving the Port bring heavy air pollutant emissions, including emissions of diesel particulate matter; the traffic they cause disrupts neighborhoods, and damages local streets that were not intended for heavy trucks.

Air pollution has been proven to cause and/or exacerbate respiratory and cardiovascular illness, and can trigger asthma attacks.<sup>29</sup> Diesel particulate matter emitted by heavy duty trucks and other freight vehicles and equipment like ships and trains, is a known carcinogen. The California Air Resources Board (“ARB”) has found that West Oakland residents are “exposed to diesel particulate matter ambient concentrations that are almost three times the average background diesel particulate matter ambient concentrations in the [Bay Area Air Quality Management District].”<sup>30</sup> Indeed, West Oakland residents experience a lifetime potential cancer risk of 1,200 excess cancers per million due to diesel particulate matter emissions. In comparison, the ARB found an excess cancer risk due to diesel particulate matter of 480 excess cancers per million across the entire San Francisco Bay Area.<sup>31</sup> The risk that West Oakland residents face is nearly three times the risk that Bay Area residents generally face. Diesel particulate matter emissions from the Port alone are responsible for a risk of approximately 200 excess cancers per million.<sup>32</sup>

In 2008, the ARB conducted a diesel particulate matter Health Risk Assessment in West Oakland. The 2005 baseline emission inventory used in the assessment showed that heavy duty trucks accounted for 112 tons per year of diesel particulate matter emissions, or 13% of the total

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<sup>28</sup> Harriett Tubman Preschool is located on 3<sup>rd</sup> street, in the Hoover/Foster neighborhood of West Oakland, adjacent to the I-580 and I-980 intersections, which experience heavy traffic to reach the Port and Port facilities. See, map location, available at: <https://www.google.com/maps/place/Harriet+R+Tubman+CDC/@37.8236086,-122.2731381,15z/data=!4m5!3m4!1s0x0:0x1b8f115e05028cb2!8m2!3d37.8236086!4d-122.2731381> (last accessed, March 30, 2017). The Baby Academy and Infant Day Care Center is also located in West Oakland’s Prescott neighborhood, which is adjacent to the I-880 or “Nimitz Freeway” that feeds directly onto frontage roads serving the Port. See, map location, available at: <https://www.google.com/maps/place/The+Baby+Academy+Infant+Care+%26+Preschool/@37.8094548,-122.2975516,15z/data=!4m5!3m4!1s0x0:0x891cc2ecd329e327!8m2!3d37.8094548!4d-122.2975516> (last accessed, March 30, 2017).

<sup>29</sup> Saffet Tanrikulu, Cuong Tran, and Scott Beaver, Bay Area Air Quality Management District, *Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area* (September 2011), available at <http://www.baaqmd.gov/~media/files/planning-and-research/research-and-modeling/cost-analysis-of-fine-particulate-matter-in-the-bay-area.pdf> (last accessed March 30, 2017).

<sup>30</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

<sup>31</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 22, (December 2008).

<sup>32</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

diesel particulate matter emissions inventory for the West Oakland area, with the remaining diesel particulate matter emissions coming from trains and ships serving the Port area.<sup>33</sup> An estimated 2,800 medium sized, short distance trucks, also known as drayage trucks, serve the Port of Oakland multiple times per week, and there are approximately 10,000 truck trips to and from the Port, with an additional 1,400 truck trips daily between the Port and distribution centers in West Oakland.<sup>34</sup> These figures are expected to grow as the Port expands, which will result in additional truck traffic through the West Oakland community. Further expansions of the Port's activities will bring more ships and more trains to the area, further elevating the amount of diesel particulate matter in the air throughout West Oakland, and increasing the resulting adverse health impacts affecting West Oakland residents.

As demonstrated through ARB's 2008 Health Risk Assessment, truck traffic hurts communities and makes it more difficult to build thriving, resilient neighborhoods. People living on busy streets, with trucks rumbling by frequently, are more reluctant to go outside to exercise; residents have fewer opportunities to meet their neighbors and to build a close-knit community within their neighborhood.<sup>35</sup> If they are parents they are also more reluctant to let their children play outside. Closely connected communities can provide important physical and mental health benefits;<sup>36</sup> truck traffic impedes these benefits for residents of West Oakland.

Moreover, while diesel particulate matter emissions from the Port alone are responsible for approximately 200 excess cancers per million,<sup>37</sup> West Oakland residents are consistently exposed to a variety of other, cumulative impacts that result in poor health outcomes in the community. All-cause death rates in West Oakland are higher than all-cause death rates in the city of Oakland overall.<sup>38</sup> As a result, West Oakland has one of the lowest life expectancies of all communities in Oakland (see *Figure 4*).

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<sup>33</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 15, Table 3 (December 2008).

<sup>34</sup> UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Air-6 (March 2010).

<sup>35</sup> UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Transportation-9 (March 2010) (showing that communities with higher traffic volumes are not as close-knit as communities with lower traffic volumes).

<sup>36</sup> UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Transportation-10 – Transportation-11 (March 2010).

<sup>37</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

<sup>38</sup> Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, p. 13, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

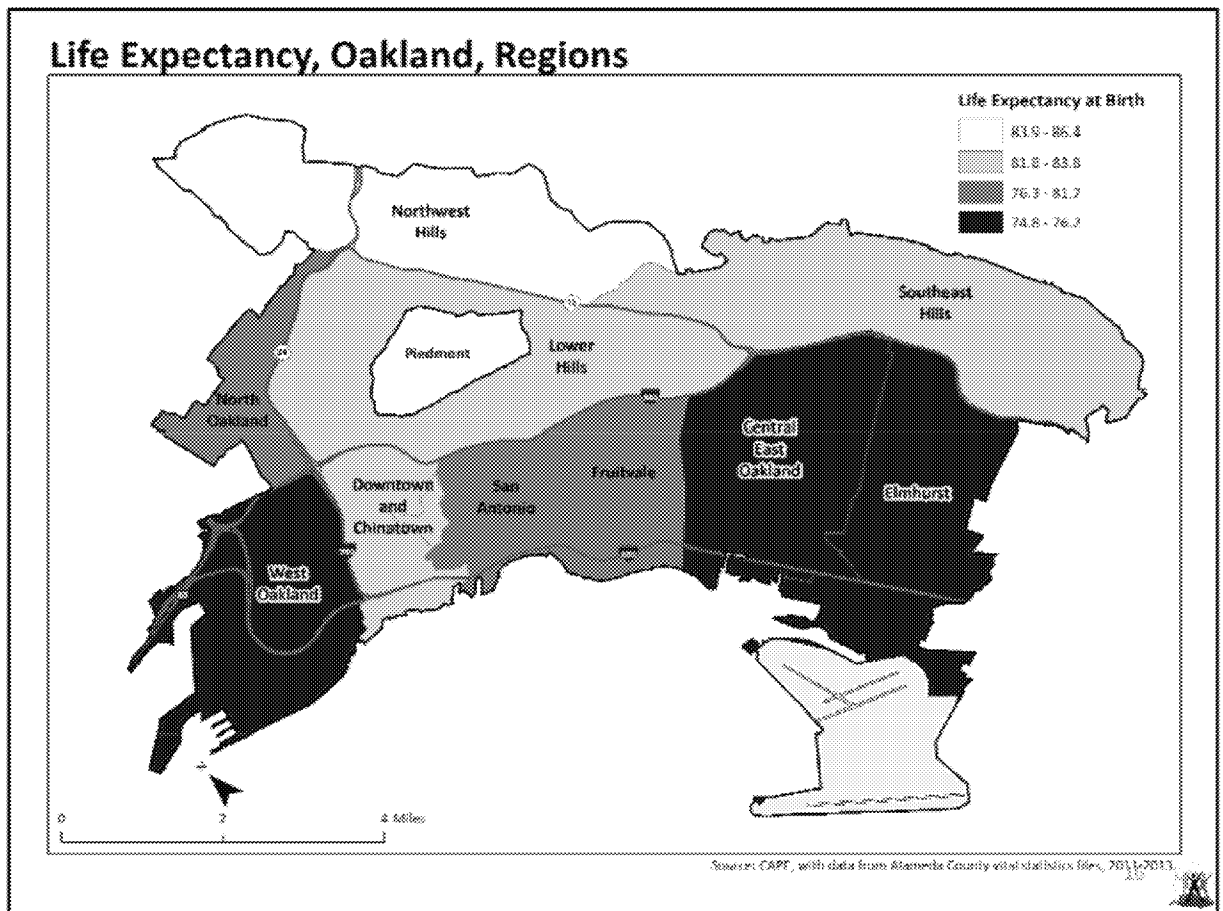


Figure 4 Life expectancies in Oakland's communities.<sup>39</sup>

When compared to other areas of Alameda County, West Oakland also has elevated rates of emergency room visits due to stroke-related and congestive heart failure hospitalizations, and asthma hospitalizations in children older than 5.<sup>40</sup>

## B. History of the Port and Army Base

The Port is the fifth largest container port in the United States and the second largest in the State of California, behind the combined ports of Los Angeles and Long Beach. Established in 1927, the Port is home to 18 ship berths, 236 container cranes, two rail yards and approximately 500 pieces of cargo handling equipment, as well as 2,500 trucks. In 2016, the Port moved over 2 million 20-foot equivalent units of containers in and out of the Bay area.

<sup>39</sup> Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, p. 16, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

<sup>40</sup> Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, pp. 9-12, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

OAB is a 425-acre facility located along the Oakland waterfront, just north of the Port and south of the eastern portion of the San Francisco Bay Bridge.<sup>41</sup> It was originally commissioned to serve as a United States Army base in 1941, and during World War II it developed to serve as a major cargo port.<sup>42</sup> Following the end of the war, OAB continued to serve as a shipping and rail terminal, providing logistical support for the subsequent Korean, Vietnam and Persian Gulf wars.<sup>43</sup> In 1995 the United States Defense Base Closure and Realignment Commission recommended closure of OAB, and it officially closed OAB's operations as an army base in 1999.<sup>44</sup>

Following its decision to close the base, the United States Department of Defense designated a local reuse authority – the Oakland Army Base Reuse Authority – as the entity charged with the oversight of all post-closure redevelopment at OAB.<sup>45</sup> In order to assist in informing and influencing the ongoing land use changes at OAB, prior to the completion of OAB's closure, the Reuse Authority established the West Oakland Community Advisory Group (WOCAG).<sup>46</sup> In line with its purpose, the WOCAG met for over ten years to discuss and present community recommendations relating to the new uses and businesses that would benefit West Oakland residents. These recommendations were collected, reviewed and compiled by the Redevelopment Agency until its dissolution, and they were, to an extent, incorporated into the early planning stages for the OAB closure.

In 2000, the Oakland City Council designated OAB and its surrounding properties as a "Redevelopment Area," then under the jurisdiction of the City's Redevelopment Agency, the Port and the County of Alameda, pursuant to a Joint Powers Agreement. The closure process was guided by a "Preliminary Redevelopment Plan" that was formulated with some early input from the WOCAG.<sup>47</sup> Pursuant to this "Preliminary Redevelopment Plan", the City broadly committed to the "redevelopment, rehabilitation, and revitalization of the area within the boundaries of the [OAB]" and its surroundings.<sup>48</sup> The City also sub-divided OAB into two general development areas, shown in *Figure 5*, below. The first was a 140-acre "Gateway Development Area," situated in the north and northwest portion of the sub-district, owned by the City and the OAB Redevelopment Agency.<sup>49</sup> The second was a 170-acre "Port Development

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<sup>41</sup> Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Executive Summary, p. 1 (July 2012), available at: <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

<sup>42</sup> *Id.*, p. 14.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Id.*, p. 15.

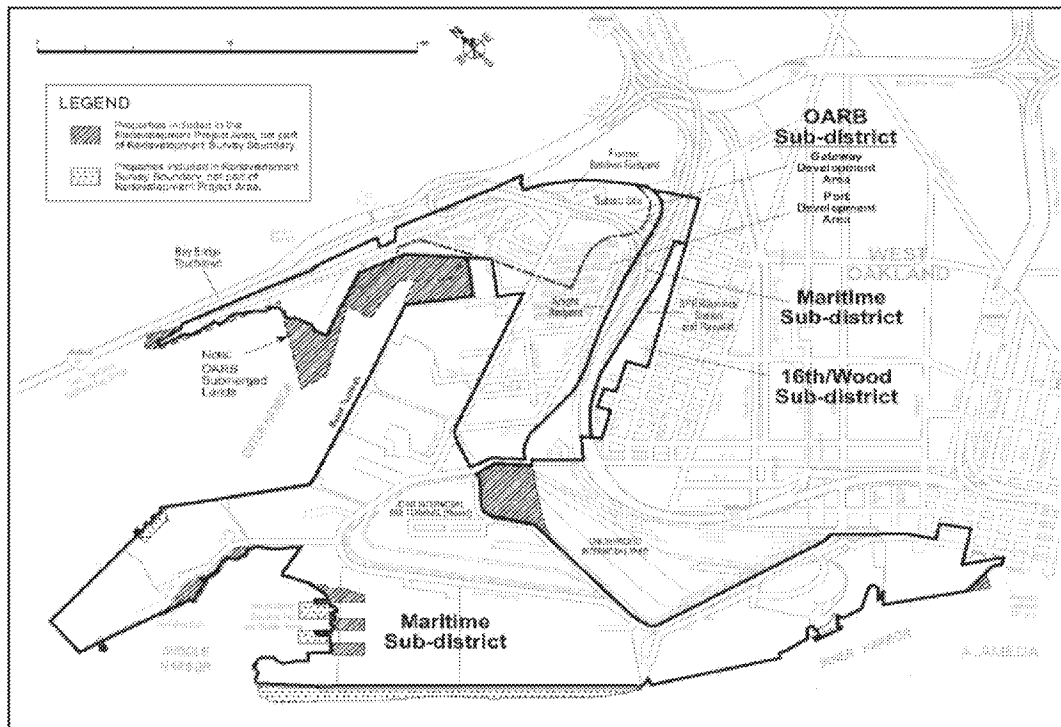
<sup>46</sup> *Id.*, p. 16.

<sup>47</sup> See Redevelopment Plan for the Oakland Army Base Redevelopment Project, Adopted June 11, 2000, Amended and Restated on December 21, 2004 (Ordinance No. 12644 C.M.S.), and on June 7, 2005 (Ordinance No. 12672 C.M.S.), p. 2.

<sup>48</sup> City of Oakland, *Redevelopment Plan for the Oakland Army Base Redevelopment Project* (June 11, 2000)(Amended and restated December 21, 2004 and June 7, 2005), available at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak030544.pdf>.

<sup>49</sup> See LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, pp. 19-20 (May 2012), available at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf>.

Area” located in the west and southeast portions of the OAB, owned and operated by the Port.<sup>50</sup> In addition to these two main sub-areas, the City also designated two additional sub-districts – the “Maritime” sub-district, which is comprised of 1,290 acres owned and operated by the Port; and the “16th and Wood” sub-district – an additional 41 acres owned by various private entities.<sup>51</sup>



OARB Area Redevelopment EIR  
Figure 3-2 OARB Redevelopment Project Area  
April 2002

g. borchard & associates

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002<sup>52</sup>

In 2002, the City approved a new and more detailed “Oakland Army Base Redevelopment Area Plan” and a supporting Environmental Impact Report (EIR) analyzing the effects of the OAB closure and the City’s updated planning proposals for redevelopment on OAB property under the California Environmental Quality Act.<sup>53</sup> According to the City’s 2002 approval, the Gateway Development Area would be redeveloped pursuant to a “flexible” alternative land use plan, which specifically contemplated the construction and operation of

<sup>50</sup> See LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, pp. 19-20 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> City of Oakland, *Oakland Army Base Project: Maps*, available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/image/dowd007621.jpg> (last accessed April 4, 2017).

<sup>53</sup> See Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, p. 1 (July 31, 2002), available at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

waterfront light-industrial and flexible office space including research and development (“R&D”) offices, as well as other “business-serving retail” and “high-end commercial development” spaces like a “Four Star Hotel.”<sup>54</sup> While the 2002 plan also included some warehousing and distribution, as well as ancillary maritime support facilities, the majority of land uses specified in the plan consisted of light industrial development, so as to attract businesses focused on industries other than heavy freight industrial activities.<sup>55</sup>

Despite the generally beneficial land-uses considered and approved in the City’s 2002 Redevelopment Plan approval, the community was concerned, at the time, that the Plan did not demonstrate an honest commitment by the City to redevelop the OAB in a way that would genuinely benefit surrounding residents in West Oakland. In 2002, the WOCAG issued recommendations in response to the City’s EIR and proposed Redevelopment Plan, which expressed the community’s concerns with the direction of the City’s land use and planning decisions, and its displeasure with the way their recommendations had been treated up to that point.<sup>56</sup> Specifically, the WOCAG explained that the 2002 plan approval and related EIR did not provide enough detail regarding the City’s proposed development plans to assure that the OAB redevelopment would confer tangible, direct community benefits.<sup>57</sup>

Just as feared by the community, as both the City and Port continued to receive federal land grants of former OAB land, they began discussions with potential developers seeking to expand Port-related freight activities at OAB, even though the approved Redevelopment Plan designated very limited land for such activities. Notably, these discussions were held while parallel discussions were still taking place among WOCAG members and City staff – thus, while the WOCAG was still developing its input on the OAB development process.<sup>58</sup>

Between 2006 and 2008, WOCAG continued to submit its recommendations to the City. During that time, the WOCAG focused its recommendations on the City prioritizing development proposals that result in less truck traffic through West Oakland, due to health

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<sup>54</sup> Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Section 3.2.1, p. 27 (July 31, 2002), available at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

<sup>55</sup> *Ibid.*; see also, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, p. 20, Table 2-1 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) (comparing the land-use designations approved in 2002, with those considered and ultimately approved by the City a decade later).

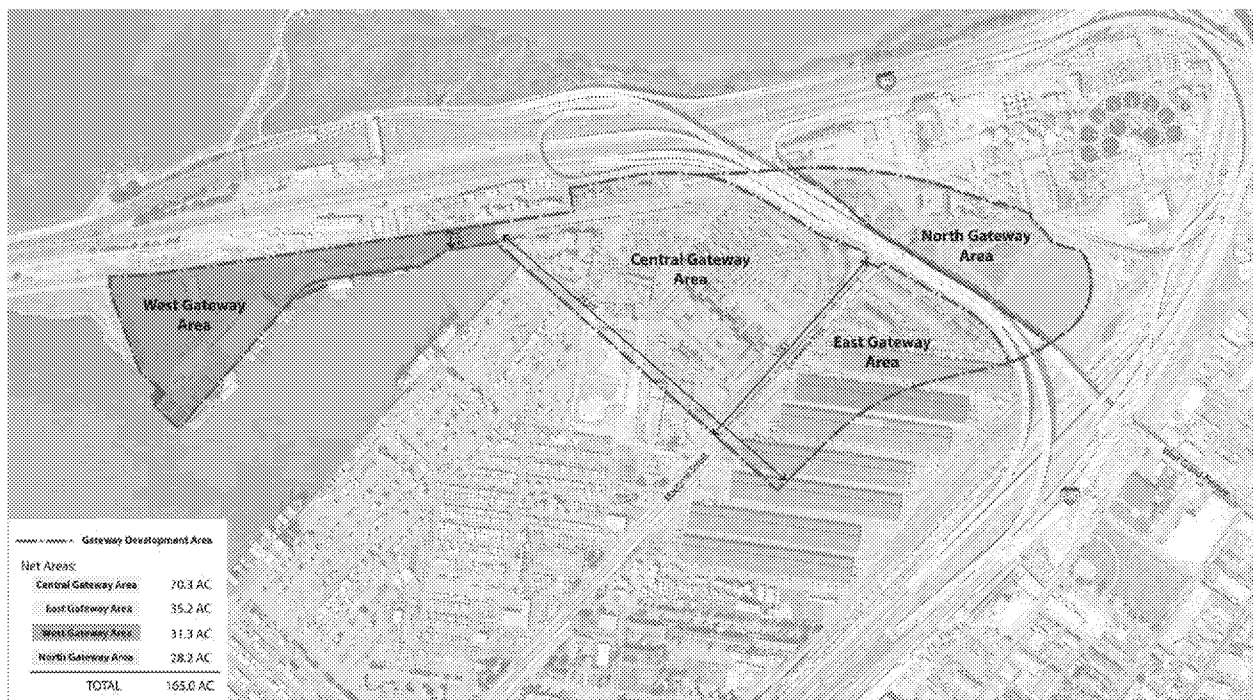
<sup>56</sup> George M. Bolton III, West Oakland Community Advisory Group to Scott Gregory, EIR Project Manager, City of Oakland (June 11, 2002) (noting that “it is an insult to the many citizens of the City of Oakland who have given freely of their time and effort to serve the [Oakland Army Base Reuse Authority] and the City of Oakland in the base conversion process [only] to have their efforts ignored and not evaluated in this EIR”).

<sup>57</sup> George M. Bolton III, West Oakland Community Advisory Group to Scott Gregory, EIR Project Manager, City of Oakland (June 11, 2002).

<sup>58</sup> West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland “Gateway” Development Area*, pp. 4-5 (June 2008).

impacts many residents were already facing due to the Port's growing activity.<sup>59</sup> WOCAG wanted businesses such as truck servicing and truck parking to be relocated out of the community, and to "leave their former sites available for more appropriate, i.e. lower impact commercial use."<sup>60</sup>

Notwithstanding the input received from WOCAG, however, the City continued its discussions with Prologis and CCIG, and began negotiating an agreement with the developers, to build a large-scale warehouse and shipping development project for portions of all three sub-districts created under the City's prior approvals, which became jointly termed, the "Gateway Development Area," pictured in *Figure 6*, below.<sup>61</sup>



*Figure 6* Gateway Development Area.<sup>62</sup>

<sup>59</sup> West Oakland Community Advisory Group, *Re: Army Base-Economic Development* (February 20, 2006); West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area* (June 2008).

<sup>60</sup> West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area*, p. 7 (June 2008).

<sup>61</sup> LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, p. 21 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) ("in 2009 the joint venture between Prologis and [CCIG] was selected as the master developer").

<sup>62</sup> Oakland Redevelopment Agency, *Pre-Development Planning for the Oakland Army Base Gateway Development Area*, Figure 3-1, available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/dowd007624.pdf> (last accessed April 4, 2017).

### C. The City's Port Expansion and "Gateway Development", or 'Oakland Global', Approvals

The land uses proposed in the City's 2002 Redevelopment Plan included a "tech park" comprised of R&D office buildings, and light to moderate industrial and retail development including big box retail stores, hotels and a Cineplex.<sup>63</sup> These land uses did not include as the predominant use for the area the type of heavy industrial, large-scale warehouse, shipping, distribution and maritime activity that the City began to consider through its subsequent negotiations with Prologis and CCIG. Yet, in 2012, the same year the City received its \$2 million comprehensive TIGER 2 planning grant from DOT, the City approved the "Oakland Army Base: Outer Harbor Terminal Project" and executed an exclusive development agreement with Prologis and CCIG to expand port-related maritime activities at OAB.<sup>64</sup> Rather than conduct a new environmental review, however, the City re-approved its decade-old environmental review document that the City's staff presented to the Council as a mere addendum to the EIR analysis prepared and approved in 2002.<sup>65</sup> Rather than designing new and more appropriate mitigation corresponding to the City's new development proposals, the City also claimed that specific mitigation would be determined at a later date, when specific projects were approved.

To give an example of the drastic deviation the City took from its prior approvals, the City's 2012 Redevelopment Plan for the Outer Harbor Terminal Project involved approximately 2.5 million square feet of warehouse/distribution and maritime-related logistics uses, as compared to only 175,000 square feet of office/R&D, where as its 2002 approvals involved only 300,000 square feet of warehouse and distribution development and approximately 1.5 million square feet of office/R&D.<sup>66</sup>

Unsurprisingly, BAAQMD as well as other agencies including ARB, as well as West Oakland residents expressed their concern with the City's proposed "Outer Harbor Terminal Project," which soon simply became known as the Gateway or Oakland Global Logistics Center development project. BAAQMD in particular encouraged the City to analyze how its new development plans would impact future residents near new and existing sources of pollution, and

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<sup>63</sup> See, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Attachment B, p. 4 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) (summarizing the differences between the 2012 project, and the project analyzed and approved in 2002).

<sup>64</sup> See, Development Agreement By and Between the City of Oakland and Prologis CCIG Oakland Global LLC, Regarding the Property and Project Known as "Gateways Development/Oakland Global, dated July 16, 2013, available at: <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak055211.pdf> (last accessed, March 30, 2017).

<sup>65</sup> See, *ibid.* ("The primary difference between the 2012 Project and what was proposed for the same geographic location in the 2002 Project is a shift from office R&D to a greater amount of warehouse distribution and maritime logistics uses as the predominant use.")

<sup>66</sup> See, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, p. 4 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) (summarizing the differences between the 2012 project, and the project analyzed and approved in 2002).

provided specific suggestions for doing so.<sup>67</sup> But the City refused to conduct an additional impact analysis, again claiming that it was appropriate to defer any such analysis to a later time, and a later approval.<sup>68</sup>

On December 4, 2013, the City approved an “Army-Base Construction-Related Air Quality Plan,” purporting to address construction related impacts but again declining to analyze or mitigate impacts from the long-term operation of the Gateway development projects, or the cumulative construction and operation of the related additional Gateway development projects. The City again received letters from BAAQMD and other agencies, identifying shortcomings in the City’s proposed mitigation set forth in the “Construction-Related Air Quality Plan.”<sup>69</sup> The City again refused to incorporate the types of analysis or mitigation suggested by the agencies.

Most recently, on October 4, 2016, the City approved an additional Northeast Gateway construction management plan allowing Prologis and CCIG to begin construction at the Northeast Gateway site on November 1, 2016, and to eventually operate a global trade and logistics complex that is worlds different than what the City proposed and approved in its initial land use decisions relating to the OAB, and greater “Redevelopment Area.” After the City approved this most recent construction management plan, Prologis issued three “45-day notices” in the month of February, 2017, which relate to three additional air quality plans currently under review by the City: (1) an operations air quality plan for the Northeast Gateway project, which was issued on February 2, 2017; (2) a “Construction and Operations” air quality plan, for the Southeast and Central Gateway Projects, issued on February 3, 2017; and (3) a “Phase 3 Construction” air quality plan, issued on February 9, 2017. To this day, neither the City nor Port has updated the cumulative air quality analysis to analyze or mitigate, in a meaningful manner, the ongoing air pollutant emissions from the construction and operation of the full Gateway, or Oakland Global Logistics Center development project.

#### IV. LEGAL BACKGROUND

DOT regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.” 49 C.F.R. § 21.5(a).

These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

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<sup>67</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Ulla-Britt Jonsson, City of Oakland, *Subject: West Oakland Specific Plan Notice of Preparation of a Draft Environmental Impact Report* (November 21, 2012).

<sup>68</sup> See City of Oakland, *West Oakland Specific Plan: Final Environmental Impact Report*, pp. 4-21 to 4-22 (May 2014).

<sup>69</sup> See, generally, Rachel Flynn, Director, Department of Planning and Building to Deanna J. Santana, City Administrator, *Subject: Approval of Army Base Construction-Related Air Plan* (December 4, 2013), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak044541.pdf> (last accessed April 4, 2017).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program. . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

49 C.F.R. § 21.5(b).

A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

49 C.F.R. § 21.5(d).

EPA regulations implementing Title VI state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, [or] national origin[.]” 40 C.F.R. § 7.30. The regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

(b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. § 7.35.

These regulations make clear that discrimination on the basis of race is a violation of Title VI whether it is the purpose of the decision or its effect. 49 C.F.R. § 21.5(d); 40 C.F.R. § 7.35(c).

## **V. VIOLATIONS OF TITLE VI**

### **A. Discriminatory Acts**

The City's approval of the Northeast Gateway Construction Management Plan on October 4, 2016 is the latest example of the City and Port's discriminatory actions regarding the development and expansion of harmful freight activities at the Port and OAB. The approval is part of a continuing pattern of actions utilizing criteria and methods that have the purpose or effect of subjecting the surrounding community of color to the disproportionate externalities of that freight activity.

Since 2012, the City, in particular, has sought to abandon the original commitment to develop the OAB in a way that would benefit the surrounding community. While the WOCAG was asked to provide input on recommendations for development early in the OAB Redevelopment process, the City proceeded with its own negotiations to expand freight-related activities notwithstanding the community recommendations, and notwithstanding the fact that such activities would add to the impacts on the already overburdened surrounding communities of color. The City has also consistently refused to consider the input of advisory and stakeholder groups including the WOCAG, who urged the City to prioritize development proposals that would result in less truck traffic through West Oakland.<sup>70</sup> At each step of the way, the City has declined to analyze the impacts of expanded freight activities, and has declined to adopt specific mitigation by claiming that such analysis and mitigations were not required or that they would be addressed at a later point.

Since the abrupt change in the proposed OAB redevelopment plan in 2012, the community and concerned agencies have been demanding analysis of the impacts, and assurances that the effects of expanding freight activities will be mitigated. At each step, the City has declined to do any more than assure that the project will comply with existing minimum regulatory requirements.

In 2013, BAAQMD wrote to the City to highlight the City's lax mitigation measures for the OAB redevelopment project, pointing out that the City's plan for reducing construction emissions from the OAB included mitigation measures with easy loopholes for industry. The plan required lower-emitting equipment to the extent that it was "readily available" in the Bay

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<sup>70</sup> West Oakland Community Advisory Group, *Re: Army Base-Economic Development* (February 20, 2006); West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area* (June 2008).

Area.<sup>71</sup> The BAAQMD noted that “the Plan does not include any guidance on how it will be determined if the equipment is ‘readily available’ or ‘cost effective.’”<sup>72</sup> BAAQMD concluded its letter with a list of specific recommended requirements for all OAB construction activity. But the City declined to make any of the recommended changes.

In 2014, both BAAQMD and the Alameda County Public Health Department submitted letters raising new concerns with the City’s planning activities. The Alameda County Public Health Department’s letter urged the City to strengthen the proposed mitigation measures, because “[impacts from development at the Port and OAB] will further exacerbate existing health conditions in West Oakland.”<sup>73</sup> BAAQMD contacted the City’s Strategic Planning Division to recommend additional air quality controls, noting that the West Oakland community experiences a higher cancer risk than any other Bay Area community and compliance with minimum regulatory requirements will not be sufficient to reduce health risks in the community to a safe level.<sup>74</sup> Again, the City took no action.

In 2015, BAAQMD expressed concern about the Port’s and the City’s continued reliance on the environmental review conducted in 2002, and re-approved in 2012 as a basis for the continued expansion of port-related infrastructure development at OAB. Among other concerns, BAAQMD expressed serious trepidation regarding the facts that both the 2002 and 2012 reports were based on outdated national ambient air quality standards for fine particulate matter emissions.<sup>75</sup> In addition, the air quality analysis provided in the City’s subsequent air quality management plan analyses only considered construction emissions, and not the long-term impacts from continued development at the Port and OAB.<sup>76</sup>

Most recently, in 2016, BAAQMD, ARB and WOEIP all submitted comments on the Northeast Gateway Construction Management Plan. In a letter addressed to the City, dated June 3, 2016, BAAQMD expressed its concern that, again, the City’s proposed management plan exclusively dealt with the air quality impacts associated with construction, and failed to consider the long-term air quality impacts that would result from the project. BAAQMD also complained that even within its limited scope, the plan did not include air quality mitigation measures

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<sup>71</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Alisa Shen, City of Oakland, *Subject: Comments on the Oakland Army Base Draft Mitigation Monitoring and Reporting Program (MMRP) Project Manual – Components for Complying With Construction Related Air Quality Requirements (Plan)* (July 22, 2013).

<sup>72</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Alisa Shen, City of Oakland, *Subject: Comments on the Oakland Army Base Draft Mitigation Monitoring and Reporting Program (MMRP) Project Manual – Components for Complying With Construction Related Air Quality Requirements (Plan)* (July 22, 2013).

<sup>73</sup> Muntu Davis, Alameda County Health Care Services Agency, Public Health Department to Ulla-Britt Jonsson, City of Oakland, *Subject: Re: West Oakland Specific Plan Draft Environmental Impact Report and Public Health* (March 17, 2014).

<sup>74</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Ulla-Britt Jonsson, City of Oakland, *Subject: Draft Environmental Impact Report for the West Oakland Specific Plan* (March 20, 2014).

<sup>75</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Tim Leong, Port of Oakland, *Subject: Roundhouse Area Improvements Project Initial Study/Negative Declaration* (June 24, 2015).

<sup>76</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Tim Leong, Port of Oakland, *Subject: Roundhouse Area Improvements Project Initial Study/Negative Declaration* (June 24, 2015).

necessary to protect health.<sup>77</sup> ARB's letter similarly detailed recommendations for additional mitigation measures that ARB described as "critical to reducing emissions and protecting public health." WOEIP also urged the City to commit to mitigation to address the adverse impacts its approval would have on the surrounding community. These included installing solar panels on warehouses that will be constructed as part of the Gateway project development, and requiring zero-emission technologies for short-haul trucks, including drayage trucks, and cargo handling equipment.<sup>78</sup> Despite the fact that the mitigation measures requested were consistent with the City's minimal mitigation measures approved in 2002, the City declined to include any of the recommended mitigation.

This history of rejecting recommended mitigation is the product of a piecemealed process that denies meaningful public participation by narrowing the scope of the issues that will be considered at each step of the development approvals. When WOEIP raised concerns about the lack of zero-emission technology requirements for the Northeast Gateway project, and the failure to create an emission reduction plan for the development,<sup>79</sup> Prologis, the developer of the Northeast Gateway/Global Logistics Center project, argued that these concerns were not appropriate for the air quality plan under consideration, and that they could be raised when the Air Quality Operations Plan is developed.<sup>80</sup> As a result, the City Administrator dismissed the community concerns in the approved plan.<sup>81</sup> All involved in these approvals, however, know that the opportunities to mitigate emissions from operations will be limited by the physical projects that have been built as a result of the October 4, 2016 approval.

The October 4, 2016 approval demonstrates that the City's promise of future analysis and mitigation are empty. It is not sufficient to consider mitigation after construction is complete because mitigation must be designed into the project, prior to its construction. The October 4, 2016 approval, and subsequent initiation of construction at the Northeast Gateway site show that the City intends to allow development that will disproportionately impact the surrounding communities of color without mitigation. Whether purposeful or just in effect, the City's October 4, 2016 approval denied the benefits of redevelopment investments to the surrounding communities of color. This decision, like the various decisions that have preceded it, was made with the clear intention to streamline approval of expanded freight activities by setting up a process that precluded meaningful public participation. The decision also avoided mitigation requirements that would minimize or prevent impacts on the surrounding communities of color.

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<sup>77</sup> Jean Roggenkamp, Bay Area Air Quality Management District to Darin Ranelletti, City of Oakland, *Subject: Northeast Gateway Construction Management Plan* (June 3, 2016).

<sup>78</sup> Heather Arias, California Air Resources Board to Darin Ranelletti, City of Oakland (May 31, 2016).

<sup>79</sup> Margaret Gordon, West Oakland Environmental Indicators Project to Darin Ranelletti, City of Oakland Bureau of Planning, *Subject: Comments Standard Conditions of Approval/Mitigation Measures for the Prologis* [sic] (May 23, 2016); Ditching Dirty Diesel Collaborative to Robbie Morris, California Air Resources Board (May 25, 2016).

<sup>80</sup> Cory Chung, Development Manager, Prologis to Darin Ranelletti, City of Oakland Bureau of Planning, *Subject: RE: DRX151553 – Oakland Global Logistics Center #1 – Response to Air Quality Stakeholder Comments to SCAMMRP Public Outreach Element (Mitigation Measure PO-1)* (August 30, 2016).

<sup>81</sup> Rachel Flynn, Director, Planning and Building Department to Sabrina B. Landreth, City Administrator, *Subject: Construction-Related Air Quality Plan by Prologis for Northeast Gateway at Army Base site*, p. 4 (September 8, 2016).

The City's October 4, 2016 approval is, moreover, a single component of the City's and Port's continuous, systemic pattern of approving, or directly engaging in, the expansion of port-related infrastructure development. This pattern will continue as the City and Port pursue their expansion goals in the OAB Gateway/Oakland Global Logistics Center development. This pattern of conduct results in direct and immediate adverse effects on West Oakland residents who are predominantly people of color, and therefore violates Title VI of the Civil Right Act of 1964.

## **B. Adverse Impacts**

As outlined above, freight activity in and around the West Oakland community is responsible for a host of adverse impacts including elevated cancer risks, higher rates of asthma attacks, and disruption of the basic quality of life in the community.<sup>82</sup> The October 4, 2016 approval of the Northeast Gateway construction-related air quality plan and the City's ongoing approvals of the construction and operations of the full OAB Gateway/Oakland Global Logistics Center development area will add to the already adverse impacts suffered by the surrounding community as a result of freight activities. The October 4, 2016 approval was the first approval of one of several components to the Oakland Global Logistics Center project. This approval provided the City with an opportunity to ensure that the project was designed, and would be built in a way to limit impacts on the surrounding community, but the City refused to ensure that adequate health and safety protections were in place before allowing the developers to break ground on November 1, 2016.

In its 2008 Health Risk Assessment, ARB found that on-road heavy duty diesel trucks were the largest source of cancer risk in the community, followed by ocean going vehicles, harbor craft, locomotives, and cargo handling equipment.<sup>83</sup> All of these sources are associated with the Port's, and now with the OAB's, expanded activities.

While ARB's assessment indicated that emissions would decrease in the future as a result of regulatory actions, the assessment estimated that even after emissions reductions, "the remaining cancer risk will [still] be greater than 200 in a million in the West Oakland community," and that any reduction in emissions would not resolve the disparate impacts that West Oakland residents face when compared to residents living elsewhere throughout the City or the County.<sup>84</sup> ARB's assessment recommended "collective and innovative efforts" at all levels of government to reduce emissions and improve health outcomes in West Oakland, including a

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<sup>82</sup> Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), available at <https://www.kqed.org/news/air-pollution-dispute-west-oakland-army-base/> (last accessed March 31, 2017); Katy Murphy, *Pollution takes heavy toll on Bay Area children with asthma*, The Mercury News (February 9, 2013), available at <http://www.mercurynews.com/2013/02/09/pollution-takes-heavy-toll-on-bay-area-children-with-asthma/> (last accessed March 31, 2017).

<sup>83</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2 (December 2008).

<sup>84</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 4 (December 2008).

transition to clean technologies.<sup>85</sup> The City's approval of the Northeast Gateway Construction Management Plan, however, fails to provide any innovative or good faith effort to reduce emissions at and around the project. The City's approval does the opposite by rubber stamping the construction and operation of new large-scale port related infrastructure that will only exacerbate the existing pollution burdens West Oakland residents face.

The Alameda County Public Health Department urged the City to require a more comprehensive evaluation of, and mitigation for, the Northeast Gateway Project's increase in diesel emissions, which are also a major concern given the existing health burdens in West Oakland. Yet the City, as always, refused to adhere to the County Public Health Department's recommendations, and instead chose to adhere to its construction-only approval decision.

### **C. Disproportionality**

The October 4, 2016 approval of the Northeast Gateway construction-related air quality plan is the latest action by the City and Port to push through more freight-related development that already disproportionately impacts the communities of color in West Oakland. The Alameda County Public Health Department has found that racial disparities impact health outcomes throughout the county, and especially in West Oakland.<sup>86</sup> People of color are more likely to experience the negative health outcomes detailed above. As described by the Alameda County Public Health Department, "even at the same rung, African Americans typically have worse health and die sooner than their White counterparts. In many cases, so do other populations of color."<sup>87</sup>

As described above, West Oakland residents are also more likely to face decades of persistent poverty. Black people in Oakland are far more likely to be homeless than any other ethnic group.<sup>88</sup> These same factors are at play within West Oakland, a community that is predominantly populated by people of color. West Oakland faces higher rates of illness, crime, and higher death rates than predominantly White communities in Oakland. Residents of West Oakland face stresses that residents of other communities may never endure.

In recent years, various Bay Area media outlets have published heartbreaking stories of West Oakland residents who fear for their children's lives due to air pollution that triggers

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<sup>85</sup> California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, pp. 4-6 (December 2008).

<sup>86</sup> See Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County – Executive Summary* (2008); UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, p. ES-2 (March 2010), available at <http://www.acphd.org/media/53628/unnatcs2008.pdf> (last accessed April 4, 2017).

<sup>87</sup> Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, pp. 7-8 (2008), available at <http://www.acphd.org/media/53628/unnatcs2008.pdf> (last accessed April 4, 2017).

<sup>88</sup> Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, p. 71, Figure 33 (2008), available at <http://www.acphd.org/media/53628/unnatcs2008.pdf> (last accessed April 4, 2017).

possibly fatal asthma attacks.<sup>89</sup> These media reports, as well as anecdotal reports that have been relayed to WOEIP staff, describe parents making the difficult decision to uproot their lives in West Oakland and move to communities that are less polluted and less disrupted by truck traffic.<sup>90</sup> People want to build communities that allow them to connect with their neighbors, to enjoy parks, and to send their children to play outside. The land gifts of the former OAB properties along with multiple federal grants were intended to spur redevelopment that would benefit the surrounding communities. Instead, the City and Port have decided to “double-down” on the harmful activities that created the current conditions in West Oakland. The City and Port have manipulated their decision-making processes to prevent public participation and avoid costly mitigation investments that might interfere with such development. The October 4, 2016 approval is the latest in a string of decisions that, in purpose or effect, are destroying the vision of a sustainable and healthy West Oakland that residents want to see, and forcing those residents, mostly people of color, to either bear the disproportionate burdens or pack up and move elsewhere.

#### **D. Less Discriminatory Alternatives**

Throughout the various actions outlined above, the City and Port have declined to accept recommendations from either the community or expert agencies on process, analysis, and mitigations. The following less discriminatory alternatives were available, and continue to be available to both the City and Port:

1. The City and Port have the option and opportunity, but have continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input, including their opposition to the Gateway and Oakland Global Logistics Center development proposals, and the continued expansion of the Port’s activities.

Specifically, the City has the opportunity, but has refused, to send notifications regarding each of its piecemealed construction and operation related approvals to all neighborhood residents. The City has also failed to provide clear and consistent opportunities for neighboring residents to provide their input regarding the City’s process for ensuring that the immediate community health and safety concerns from its development approvals are addressed.

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<sup>89</sup> Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), available at <https://www.kqed.org/news/air-pollution-dispute-west-oakland-army-base/> (last accessed March 31, 2017); Katy Murphy, *Pollution takes heavy toll on Bay Area children with asthma*, The Mercury News (February 9, 2013), available at <http://www.mercurynews.com/2013/02/09/pollution-takes-heavy-toll-on-bay-area-children-with-asthma/> (last accessed March 31, 2017).

<sup>90</sup> Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), available at <https://www.kqed.org/news/air-pollution-dispute-west-oakland-army-base/>; See also City of Oakland, *West Oakland Specific Plan: Final Environmental Impact Report*, p. 4-6 (May 2014), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak049140.pdf> (last accessed April 4, 2017) (“While West Oakland’s population has increased by nearly 2,000 people between 1990 and 2010 (at a rapid rate of 15%), the African American population of West Oakland has declined by nearly 5,000 people during the same time period.”).

The City and Port also have the opportunity, but have refused, to post project-related approval documents at the various community organizations, institutions and gathering places around West Oakland, including but not limited to: the West Oakland Senior Center, city libraries, the West Oakland Youth Center and the Hoover Resident Action Council. The City has also refused to require the developers, Prologis/CCIG, to do the same.

The City has also consistently refused, despite being urged by various state, local, county and federal agencies, to convene a transparent interagency and community inclusive process by which to develop and implement a comprehensive assessment of the impacts caused by its land-use and development decisions at the Port and OAB and to both established and implement an updated mitigation, monitoring and reporting program that considers the level and extent of the full Gateway and Oakland Global Logistics Center and expanded Port operations.

2. The City has the option, but refuses, to consider the effects of the full operation of the Prologis and CCIG development of all three Gateway sub-areas prior to issuing its piecemealed approvals. The City and Port also have the option to update their analysis of impacts instead of relying on the outdated 2002 analyses for a redevelopment plan that was drastically different than the current development plans and approvals before the City.
3. The City and Port have had numerous opportunities, but have refused, to develop, or require the development of, a meaningful emissions reduction plan based on an accurate and updated assessment of the current and foreseeable levels of increased freight transport and other heavy infrastructure, maritime, shipping, distribution, storage and Port-related activities occurring at and along the Port and OAB including increases in rail and maritime emissions that are inconsistent with existing rail and maritime emission reduction standards.
4. The City and Port have had the option, but have failed, to produce or, at a minimum, require, a comprehensive truck management plan to address impacts from growing freight activities on the community of West Oakland.<sup>91</sup>

Specifically, both the City and Port have had the opportunity to, but have refused, to develop any requirements for zero-emission technologies at OAB or the Port, which would alleviate some of the air pollution impacts of additional truck traffic in and near West Oakland neighborhoods. They have also refused to require stricter limits (e.g. two minute limits) on diesel truck idling times to address existing health burdens affecting West Oakland residents, and in particular school children throughout West Oakland.

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<sup>91</sup> The Port's approval a drayage truck management plan for the Port fails to address the impacts that increased truck traffic has on the Port-*adjacent* roadways and truck traffic problems on off-Port property, e.g., the West Oakland community.

The City and Port also have the opportunity but refuse to require plug-in infrastructure as a design feature of all construction, for the Gateway and Oakland Global Logistics Center development to minimize emissions specifically caused by highly polluting refrigerated truck units serving the new Gateway developments.

The City and Port have also had the opportunity, but have refused, to engage in the planning, implementation and enforcement of Truck hauling routes that are designed to minimize community exposures to emissions, fugitive dust, potential hazardous materials, vibrations and traffic safety issues.

Both the City and Port have had the opportunity, but have refused, to enforce parking restrictions throughout the West Oakland residential community. The City has similarly refused to develop or require an enforceable West Oakland Truck Route as a part of its approved construction management Plan for the Northeast Gateway project, or as part of its ongoing approvals for the larger Gateway or Oakland Global Logistics Center project.

Both the City and Port have also had numerous opportunities, but have refused, to accept or apply for additional funding to support targeted emission reduction efforts at the Port, OAB and throughout West Oakland.

5. In large part due to their failure to require either a comprehensive truck management plan, or a meaningful emission reduction plan, both the City and Port have similarly refused to mitigate the negative air quality and resulting health impacts or other disruptions and adverse effects on the quality of life of West Oakland residents, caused by the continued increase in truck traffic to and from the Port and the OAB Gateway/Oakland Global Logistics Center properties.

## **VI. Relief**

Complainant requests that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this complaint and investigate whether the City and Port have violated Title VI of the Civil Rights Act and its implementing regulations, and indeed whether they continue to violate Title VI of the Civil Rights Act.

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Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and unless and until the City engages the surrounding community in a meaningful process by which to incorporate their input into new mitigation measures, emission controls, and conditions of approval for the development of the Gateway projects; (b) requiring the Port to coordinate with the City to develop a truly comprehensive truck management and Port emission reduction plan; and (c) Conditioning all future grants and awards from both EPA and DOT to both the City and Port on adequate assurances that the actions of both recipients will comply with Title VI as detailed above.

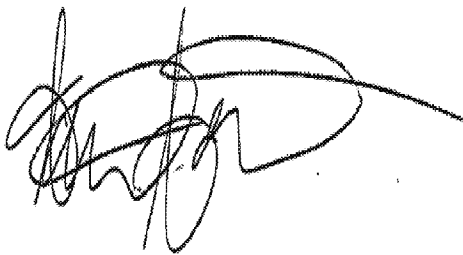
Sincerely,

A handwritten signature in black ink, appearing to be 'Yana Garcia', with a large loop at the end.

Yana Garcia

Paul Cort

*Attorneys for West Oakland Environmental Indicators Project*

A handwritten signature in black ink, appearing to be 'Adenike Adeyeye', with a large loop at the end.

Adenike Adeyeye

Research and Policy Analyst

Earthjustice

50 California Street, Suite 500

San Francisco, CA 94111

[ygarcia@earthjustice.org](mailto:ygarcia@earthjustice.org)

[pcort@earthjustice.org](mailto:pcort@earthjustice.org)

[adeyeye@earthjustice.org](mailto:adeyeye@earthjustice.org)

Message

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**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 11/16/2017 3:27:16 PM  
**To:** McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** Re: Meeting re City an Port response and draft Framework Markup

This is just EPA folks -- us, CRFLO and Region 9

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**From:** McGhee, Debra  
**Sent:** Thursday, November 16, 2017 10:26:27 AM  
**To:** Temple, Kurt  
**Subject:** RE: Meeting re City an Port response and draft Framework Markup

Do we use the confidential number with other agencies? Just a thought. . .

*Debra E. McGhee*

Team Lead  
External Civil Rights Compliance Office  
Office Phone: 202-564-4646

**"Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country, and a finer world to live in."** ~ ~ Martin Luther King, Jr. , 18th April, 1959

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**From:** Temple, Kurt  
**Sent:** Thursday, November 16, 2017 10:13 AM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>  
**Cc:** Harrison, Brenda <Harrison.Brenda@epa.gov>  
**Subject:** Re: Meeting re City an Port response and draft Framework Markup

The number and code for today's call re Oakland

**Conference Line/Code / Ex. 6**

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**From:** Temple, Kurt  
**Sent:** Monday, November 13, 2017 1:23 PM  
**To:** Temple, Kurt; Dorka, Lilian; Rhines, Dale; McGhee, Debra; Keeler, Katsumi; Rhodes, Julia; O'Lone, Mary; Garnett, Desean; Grow, Richard; Strauss, Alexis  
**Cc:** Harrison, Brenda  
**Subject:** Meeting re City an Port response and draft Framework Markup  
**When:** Thursday, November 16, 2017 11:30 AM-12:30 PM.  
**Where:** Room 2528

**Conference Line/Code / Ex. 6**